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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Effective February 4, 2002, the Department of Food and Agriculture adopted emergency regulations (File #01-0424-07E) pertaining to the requirements of issuing a certified producer's certificate that a partnership or an agricultural producer are required to obtain to sell product at a certified farmers' market. The Department now proposes to permanently adopt the emergency regulations.

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture proposes to amend Sections 1392.1, 1392.2, 1392.4 and 1392.9.1 of the regulations in Title 3 of the California Code of Regulations.

Notice is also given that any interested person may present statements or arguments in writing relevant to the proposed action until April 24, 2002. A public hearing has also been scheduled at 1:00 p.m., March 25, 2002, at the Fresno County Farm Bureau, 1274 W. Hedges Avenue, Fresno, CA. Comments may also be submitted via e-mail at jprice@cdfa.ca.gov, or faxed at (916) 654-0666. Please refer to the contact section of this notice for the contact persons and address information when submitting comments.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 1392.1(d) references labeling requirements in Section 1392.4(f), which is deleted in this proposal. Section 1392.2 clarifies the definitions for producer and certified producer's certificate, and also proposes a definition for partnerships.

Section 1392.4(f) limits the number of certified producers that may sell for, or be represented by, two other certified producers and also sets specific conditions under which a certified producer may sell. Prior to adopting the emergency regulation, the law did not limit the number of partnerships permitted on a certified producer's certificate, which may represent, or be represented by, other partnerships or entities. This proposal amends this section to equally place the same limitations and requirements on partnerships and certified producers in order to maintain a fair and competitive marketplace.

This proposal will provide certified producers whose certificate has been issued prior to the adoption of this regulation a time frame in which to comply with the new law.

Section 1392.9.1 sets requirement for partnerships, which would require persons applying for a certified producer's certificate under a partnership to provide the county agricultural commissioner with the partnership's federal tax identification number. This proposal will require that properties farmed by a partnership or similar contractual agreement are under exclusive control of the partnership, and are considered a separate entity from its individual members.

FISCAL IMPACT STATEMENTS

The Department has initially determined that these proposed regulations will have no effect on savings or increased costs to any State agency, no costs under "Part 7 (commencing with Section 17500) of Division 4" of the Government Code to local agencies or school districts requiring reimbursement, no other nondiscretionary costs or savings imposed on local agencies, and no costs or savings in federal funding to the State will result from these proposed regulations. The Department has also initially determined that the proposed regulation does not impose a mandate on local agencies or school districts.

EFFECT ON SMALL BUSINESS

The Department has initially determined that these proposed regulations may have an effect on small businesses. The Department is not aware that the proposed change in the regulations would result in added cost on small business effected by these proposed changes and would have a positive effect on such business. This is based on the fact that the Department does not have documents to rely upon to make the determination of the number of small businesses the proposed changes would affect.

EFFECT ON HOUSING COSTS

The Department has initially determined that the amendment of the proposed regulation will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has initially determined that the proposed changes will have no significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

ASSESSMENT STATEMENT

The Department has initially determined that the proposed changes in the regulations would affect the creation of jobs in California but would not create new or eliminate or expand existing businesses in California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of a cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

AUTHORITY AND REFERENCE

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 407, 42681, 42682, 42684, 47000, 47001, 47002, 47003 and 47004 of the Food and Agricultural Code, and to implement, interpret, or make specific Section 42941, 47000, 47001, 47002, 47003 and 47004 of the Food and Agricultural Code, proposes to amend regulations in Title 3 of the California Code of Regulations.

CONTACT

Inquiries concerning the proposed administrative action may be directed to Heather Spencer. Inquiries pertaining to the substance of the proposed regulation may be directed to Janice L. Price. The contact persons may be reached at the Department of Food and Agriculture, 1220 N Street, Room A-447, Sacramento, CA 95814, phone number (916) 654-0919, fax number (916) 654-0666. Comments may also be submitted via e-mail at jprice@cdfa.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

A complete copy of existing regulations, the proposed changes, and the Initial Statement of Reasons may be obtained upon request from the Department of Food and Agriculture. These documents are available on our website at www.cdfa.ca.gov/cdfa/regs.

In addition, all information, including reports, documentation, and other materials (rulemaking file) related to the proposed action is available upon request from the agency contact persons named in this notice.

The Final Statement of Reasons, when available, may also be obtained from the contact persons named in this notice. The text of the proposed regulations with any sufficiently related changes clearly indicated will be made available for 15 days prior to adoption.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3591.16(a) of the regulations in Title 3 of the California Code of Regulations pertaining to Red Imported Fire Ant Eradication Area as an emergency action. The Department proposes to continue the regulation as amended.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department contact no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture may certify that there was compliance with the provisions of Section 11346.1 of the Government Code within 120 days of the emergency regulation.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before April 22, 2002.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law provides that the Secretary may establish, maintain, and enforce eradication regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests (Food and Agricultural Code, Section 5322). The eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, and the means and methods which may be used in the eradication of said pest.

This amendment of Section 3591.16(a) established Merced County as an eradication area for red imported fire ant. The effect of the amendment is to provide authority for the State to conduct control and

eradication activities against red imported fire ant in Merced County to prevent spread of the ant to noninfested areas to protect California's agricultural industry and environment. There is no existing, comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that Section 3591.16 does not impose a mandate on local agencies or school districts. The Department has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from this action.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT

The Department has made an assessment that the proposed amendment to the regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY

The Department amended Section 3591.16(a) pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code of California.

REFERENCE

The Department amended Section 3591.16(a) to implement, interpret and make specific Sections 5761, 5762, and 5763, Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Barbara J. Hass, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: bhass@cdfa.ca.gov. In her absence, you may contact Kris Peebles at (916) 654-1017. Questions regarding the substance of the proposed regulations should be directed to Barbara J. Hass.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa/pendingregs).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons is available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 10. DEPARTMENT OF INSURANCE

NOTICE OF EMERGENCY RULEMAKING

SUBJECT: ORGANIZED AUTOMOBILE INSURANCE FRAUD INTERDICTION PROGRAM
[File No. ER01018366]

PROPOSED REGULATORY ACTION

The California Department of Insurance (CDI) proposes to amend sections 2698.70 and 2698.71 of Article 5 (sections 2698.70–2698.77) of Subchapter 9, Chapter 5, of Title 10 of the California Code of Regulations (CCR), regarding the program for the investigation and prosecution of organized automobile insurance fraud.

PUBLIC HEARING

PUBLIC PROCEEDINGS: Notice is hereby given that the CDI will conduct written proceedings, during which time any interested person or such persons duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice. Any written statements, arguments or contentions must be received by the CDI, Criminal Investigations Branch, attn: Wesley E. Kennedy, Senior Staff Counsel at 9342 Tech Center Drive, Suite 100, Sacramento, CA 95826, by 5 p.m. on April 22, 2002, which is hereby designated as the close of the written comment period. It is requested but not required that written statements, arguments or contentions sent by mail or hand delivered be submitted in triplicate. The Department has not scheduled a public hearing on this action. However, the Department will hold a hearing on April 22, 2002, I fit receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before close of the written comment period.

Comments sent by facsimile: (916) 255-3344, or electronic mail: kennedyw@insurance.ca.gov must be received before 5:00 p.m. on the last day of the public comment period. All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the CDI to provide copies of any notices for proposed changes in the regulation text of which additional comments may be solicited.

Reasonable accommodation or sign language interpreting services at a public hearing will be provided upon request. Such a request should be made no later than 15 days prior to the close of the written comment period.

CONTACT: Inquiries concerning this rulemaking process may be directed to Wesley E. Kennedy, Senior Staff Counsel, at (916) 854-5760. The back-up

contact person is George Teekel, Staff Counsel, at (415) 538-4390. Inquiries concerning the substance of this action should be directed to Wesley E. Kennedy at the above-number and may be sent by e-mail at kennedyw@insurance.ca.gov. In any such inquiry, please identify the action by using the CDI regulation control number: ER01018366

AUTHORITY AND REFERENCE

Authority: Sections 1874.8, 1874.81, Insurance Code. Reference: Sections 1874.8(a), (g) and 1874.81, Insurance Code, Vehicle Code section 670.

INFORMATIVE DIGEST

The Insurance Commissioner of the State of California (Commissioner) proposes to amend Subchapter 9, Article 5, Sections 2698.70 and 2698.71, Title 10, Chapter 5 of the CCR regarding the program for investigation and prosecution of organized automobile fraud. The purpose of the proposed amendment is to implement, interpret and make specific the provisions of the California Insurance Code (CIC) sections 1874.8 and 1874.81 which require the Commissioner to assess and distribute certain funds to California district attorneys for the purpose of prosecuting organized automobile fraud cases.

AB 1050, Chapter 885, Statutes of 1999, was signed by the Governor on October 9, 1999 creating the Organized Crime Prevention and Victim Protection Act of 1999. AB 1050, inter alia, added CIC 1874.8 and 1874.81 as well modifying existing CIC section 1872.8. In adopting AB 1050, the Legislature made the following findings and declaration of purpose:

Section 1. (a) This act shall be known as the Organized Crime Prevention and Victim Prevention Act of 1999.

“(b) The Legislature finds that organized automobile fraud activity operating in the major urban centers of the state represents a significant portion of all individual fraud-related automobile insurance cases. These cases result in artificially higher insurance premiums for core urban areas and low-income areas of the state than for other areas of the state. Only a focused, coordinated effort by all appropriate agencies and organizations can effectively deal with this problem.”

CIC section 12921 requires the Commissioner to enforce the provisions of the Insurance Code and other laws regulating the business of insurance in the State of California. CIC section 1874.8, requires the Commissioner to establish an annual assessment on each automobile for which a policy of insurance has been issued in order to fund the activity of the Commissioner, the California Highway Patrol and from 3 to 10 county District Attorney's Offices.

The proposed amendments are necessary to implement, interpret and make specific the provisions of CIC sections 1872.8, 1874.8 and 1874.81 and to conform title 10, CCR sections 2698.70 and 2698.71 to similar provisions in title 10, CCR sections 2698.61 and 2698.62. The proposed action would specify the criteria for the calculation and payment of the annual assessment as well as specify that the Commissioner may conform the overall amount of the assessment to be collected so as not to exceed the maximum amount of program expenditures authorized by the annual budget.

The specific regulation being amended by this notice is as follows:

Section 2698.70 Definitions

This notice would amend subsection (p) to add text to expressly include within the definition of vehicle both commercial and non-commercial vehicles.

Section 2698.71 Annual Fee

This notice would amend the existing text of subsection (a) to provide for an annualized payment of the assessment, eliminate existing text expressly prohibiting prorating of the payment of the assessment. This notice would amend the existing text to subsection (b) to delete the extant methodology used for calculating the payment of assessment for the second, third and fourth quarters of each calendar year and adding new text for the same purpose to accommodate the method of calculation to the annualized payment method proposed for subsection (a).

This notice would also amend existing text of subsection (c)(1) to reflect the annualized payment and calculation method proposed in subsection (a) and (b) of this section.

Subsection (d) is amended to specify that the period of delinquency will commence from the date of the "invoice" rather than the "assessment."

This notice would add a new subsection (e) which would provide the Commissioner some flexibility to adjust the annual assessment to not exceed the level of expenditure authorized by the Legislature in the Annual Budget Act.

MATERIAL INCORPORATED BY REFERENCE

There is no material incorporated by reference.

FINDING OF EMERGENCY

California Insurance Code section 1874.81, provides in pertinent portion:

"(a) The Commissioner shall adopt emergency regulations establishing the criteria that shall be used to award grants to district attorneys under Section 1874.8.

(b) The regulations required by Subdivision (a) shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Part 1, Division 3, Title 2 of the Government Code), and the adoption of those regulations shall be deemed an emergency and necessary of the immediate preservation of the public peace, health, and safety or general welfare."

DETERMINATIONS

EFFECT ON SMALL BUSINESSES

The proposed regulation will not have an adverse effect on small businesses.

IMPACT ON BUSINESSES AND JOBS

It is the initial determination of the Commissioner of the California Department of Insurance that the regulations would not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with the businesses on other states because of the slight amount of the assessment (\$.50 annually). The California Department of Insurance has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently within the State of California.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Insurance Commissioner must determine the potential impact of the proposed action on private persons or businesses directly affected by the proposal. The proposed regulations are not expected to have significant cost impact on private persons or businesses directly affected. The proposed amendments do not create or impose any additional assessment.

IMPACT ON HOUSING

The matters proposed herein will not affect housing costs.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The California Department of Insurance has determined that there will be no cost savings or increase, nor will these regulations impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the CDI must determine that no alternative considered by the California Department of Insurance would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affect private persons than the emergency action.

The Commissioner must determine that no alternative considered by the agency would be more effective in carrying out the purposes for which the regulation are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations. The amendments proposed in this notice have been developed as a result of discussion with affected entities and members of the public since the original regulations text was adopted and during the promulgation of amendments in a similar grant program.

FEDERAL FUNDING

The matters proposed herein will not affect federal funding.

NON-DISCRETIONARY COST OR SAVING

The matters proposed will not impose any non-discretionary cost or savings to local agencies.

COSTS AND SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to state agencies.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO HEARING ROOMS

The facilities used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below in order to make special arrangements, if necessary).

REPRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Insurance Commissioner prior to the public hearing on the proposed regulations. Written comments transmitted via facsimile machine will be accepted. Comments should be sent to the agency contact person: Department of Insurance, Fraud Division, Attn: Wesley E. Kennedy, 9342 Tech Center Drive, Suite 100, Sacramento, CA 95826. All interested persons may present oral/or written testimony at any scheduled public hearing.

ACCESS TO COPIES OF PROPOSED REGULATION AND STATEMENT OF REASONS

The California Department of Insurance has prepared and has available for public review an initial statement of reasons for the emergency regulations and any supplemental information contained in the rulemaking file. The California department of Insurance will prepare and make available for public review a final statement of reasons. Upon prior request, the rulemaking file is available for inspection at 9342 Tech Center Drive, Suite 100, Sacramento, California, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, holidays excepted. Requests should be directed to the agency contact person (listed above).

The Department of Insurance maintains an internet web site at where copies of materials published or distributed by the department may be obtained. That web site is: <http://www.insurance.ca.gov>. Find near the top of the page the heading "Protecting Consumers." In this section scroll down until you see the subheading "BE INFORMED." Click on the nearby "search for proposed regulations" link. When the search field appears enter "ER01018366" (the Department's regulation file number for these regulations). Alternatively, search for the California Insurance Code number of a code section that these regulation implement (e.g., "1874.8") or search by key word (e.g., "assessment" or "interdiction"). Then click on the "submit" button to display links the filing documents.

NOTICE OF EMERGENCY RULEMAKING

Pursuant to Insurance Code section 12921.7, a notice of proposed emergency, including the informative digest, which contains the general substance of the proposed regulation, and a copy of the proposed regulations were sent to all persons on the Insurance Commissioner's interested parties mailing list. Pursuant to California Government Code section 11346.4, subsection (a), the Commissioner has also mailed this notice (including a copy of the proposed regulation) to all those who have filed a request for notice of regulatory action pursuant to that section. A proof of service, indicating compliance with Insurance Code section 12921.7 and Government Code section 11346.4, subsection (a) has been filed with this regulatory action package.

ADOPTION OF REGULATION

Following the close of comment period and any hearing, the Insurance Commission may adopt the regulation substantially as described in this notice and informative digest. Copies of the regulations, as adopted, will be sent to all persons on the Commissioner's interested parties mailing list and to all person

who provided comment during the comment period or at any public hearing, and those persons who have requested copies of information regarding the regulations.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations as proposed would not mandate the use of specific technologies or equipment.

PUBLIC DISCUSSION

A public discussion was not undertaken prior to the publication of the regulation. The amendments do not involve complex or large number of proposals that can not easily be reviewed during the comment period. In addition, the regulation amends existing text to incorporate verbatim regulatory text recently promulgated in a closely related program. It is not anticipated that these conforming amendments will be controversial.

ADDITIONAL STATEMENTS AND COMMENTS

As a result of public comment (oral or written), the Insurance Commissioner may determine that changes to the proposed regulations are appropriate. If those changes are sufficiently related to the original text the public was originally noticed of in the proposed regulatory action, copies of the revised proposed regulations will be sent to all persons who testified at the public hearing or submitted comments during the comment period or at the public hearing, and those persons who have requested copies of information regarding the regulation. The full text of the changed regulations will be available for at least 15 days prior to the date on which the agency adopts, amends, repeals the resulting regulations.

At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was not adequately placed on notice that the changed action could result from the originally proposed action.

If adopted these regulations will appear in Title 10, Chapter 5, Subchapter 9, Article 5, Sections 2698.70 and 2698.71, California Code of Regulations.

TITLE 10. TECHNOLOGY, TRADE AND COMMERCE AGENCY

NOTICE OF INTENTION TO AMEND THE CONFLICT OF INTEREST CODE

NOTICE IS HEREBY GIVEN that the California Technology, Trade and Commerce Agency ("Agency"), pursuant to the authority vested in it by section 87306 of the California Government Code, proposes amendment to its Conflict of Interest Code for the Small Business Development Board and Small Business Development Corporations. The purpose of

these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the California Government Code.

The Agency proposes to technically amend the conflict of interest code to reflect statutory changes made to the names of the Agency, the Small Business Board and the small business financial development corporations.

The Agency also proposes to amend Section 5101 by deleting obsolete filing instructions and adding specific language for filing with the Agency.

The proposal also amends Appendix A by defining designated persons and Appendix B by changing the disclosure requirements for consultants.

Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than **April 22, 2002**, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than **15 days before close of the written comment period**, by contacting the Contact Person set forth below and a public hearing will be scheduled.

The Agency has prepared a written explanation of the reasons for the proposed amendments (Initial Statement of Reasons) and has available the information on which the amendments are based. Copies of the proposed amendments, the Initial Statement of Reasons, and the information on which the amendments are based may be obtained by contacting the Contact Person set forth below.

The Agency has determined that the proposed amendments:

- Impose no mandate on local agencies or school districts.
- Impose no costs or savings on any state agency.
- Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
- Will not result in any nondiscretionary costs or savings to local agencies.
- Will not result in any costs or savings in federal funding to the State.
- Will not have any potential cost impact on private persons, businesses or small businesses.
- Will have no impact on housing costs.

In making these proposed amendments, the Agency must determine that no alternative considered by the Agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

CONTACT PERSON

All inquiries concerning this proposed amendment and any communications required by this notice should be directed to:

Terri Toohey
California Technology, Trade and Commerce Agency
1102 Q Street, Suite 6000
Sacramento, CA 95814
(916) 324-3787
e-mail: ttoohey@commerce.ca.gov

TITLE 11. DEPARTMENT OF JUSTICE

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Department of Justice, Office of the Attorney General, proposes to revise Title 11, California Code of Regulations, Division 4, Chapter 1, sections 3000 through 3008, and to adopt new Chapters 2 and 3, sections 3100 through 3204, which would implement new statutory provisions governing civil actions filed by private persons in the public interest pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, as amended by Chapter 599, Statutes of 1999, and Chapter 578, Statutes of 2001 (Proposition 65).

PUBLIC PROCEEDINGS

Two public hearings will be held, at which time any person may present statements or argument orally or in writing relevant to the action described in this notice, at the following times and places:

- April 23, 2002, commencing at 10:00 a.m., in the Auditorium at the Ronald Reagan State Office Building, 300 S. Spring Street, Los Angeles, California; and
- April 26, 2002, commencing at 10:00 a.m. in Room 1, Second Floor, at the Elihu Harris Building, 1515 Clay Street, Oakland, California.

Any written statements or arguments must be received by the Office of the Attorney General at the following address by 5:00 p.m. on April 26, 2002, which is hereby designated as the close of the written comment period. Comments sent by mail, courier, or fax, should be addressed to:

Edward G. Weil
Deputy Attorney General
Office of the Attorney General
1515 Clay Street
20th Floor
P.O. Box 70550
Oakland, CA 94612
Fax: (510) 622-2270

It is requested, but not required, that written statements or argument be submitted in triplicate.

CONTACT

Inquiries concerning the proposed administrative action described in this notice may be directed to Edward G. Weil, Deputy Attorney General, in writing at the above address, or by telephone at (510) 622-2149. If Mr. Weil is not available, inquiries may be directed to Susan S. Fiering, Deputy Attorney General, at the same address, or by telephone at (510) 622-2142. Inquiries concerning the substance of the proposed regulations may be directed to Mr. Weil, or if he is not available, Ms. Fiering.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

A. Private Enforcement of Proposition 65.

Under Proposition 65, enforcement actions may be brought by the Attorney General, District Attorneys, and certain City Attorneys. In addition, any person may sue "in the public interest" if they give notice of the violation to the alleged violator, the Attorney General, and those District Attorneys in whose jurisdiction the violation is alleged to occur. (Health and Safety Code § 25249.7.) In the first few years of the statute, the Attorney General received a small number of notices. In the last two years, however, several thousand notices have been received.

Under SB 1269 (Statutes of 1999, Ch. 599), private plaintiffs must notify the Attorney General when they file a case under Proposition 65, and when an action is subject to a settlement. Certain information is required by the statute, and the Attorney General may require other information. The plaintiff must certify to the court that it has complied with this part of the law.

B. 2001 Legislative Amendment

SB 471 (Statutes of 2001, Ch. 578), adopted additional requirements for private enforcement of Proposition 65. The subjects of this proposed rulemaking are the Certificate of Merit Requirement and the requirement that courts and the Attorney General review settlements.

1. The Certificate of Merit Requirement

The statute states that sixty-day notices alleging failure to warn must be sent with a notice in which the attorney for the party states that they have consulted with someone with:

relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action, and that, based on that information, *the person executing the certificate believes there is a reasonable and meritorious case for the private action.* Factual information sufficient to establish the basis of the certificate of merit. . . shall be attached to the certificate of merit that is served on the Attorney General.

(§ 25249.7(d)(1); emphasis added.) Judicial review of this certificate is limited. A court may review the certificate, but only if the court rules for the defendant and finds that there was no actual exposure. Then, if the court further finds that “there was no credible factual basis for the certifier’s belief that an exposure had occurred,” the action is deemed frivolous under Code of Civil Procedure section 128.5. The legislation does not specify the necessary elements of the Certificate of Merit or any other consequences of failure to provide a proper certificate. Thus, there is a need to provide greater specificity. The Attorney General already has received a number of informal inquiries concerning the nature of a satisfactory Certificate of Merit and supporting information. These regulations include provisions describing the form and content of the Certificate of Merit, as well as potential consequences of failure to comply.

Although the Attorney General is not the Governor’s designated “lead agency” for Proposition 65 implementation, he is the official designated by the law to receive all sixty-day notices of violation, the Certificates of Merit, and the information in support of the Certificate of Merit. Moreover, the purpose of the Certificate of Merit and supporting information is in part to enable the Attorney General to determine whether he should pursue the alleged violation. Accordingly, the Attorney General is the appropriate state official to adopt requirements concerning the form and content of the Certificate of Merit and supporting information.

2. Judicial and Attorney General Review of Settlements.

The judicial review of settlements provision states that any settlement of an action brought by a person in the public interest under Health and Safety code section 25249.7(d) be submitted to the court upon noticed motion, and that the court may approve the settlement only if it finds that any warning required by

the settlement complies with the law, that any attorney’s fees are reasonable, and that any civil penalty is reasonable. The plaintiff bears the burden of producing evidence necessary to sustain those findings. The statute also require that the plaintiff “serve the motion and all supporting papers on the Attorney General, who may appear and participate in any proceeding without intervening in the case.” (Health and Safety Code § 25249.7(f)(4).)

The Attorney General has received a number of informal inquiries concerning the Attorney General’s views about the type of information necessary to make the showings required by the new legislation. Ultimately, these decisions will be made by the court to which the settlement is submitted. The Attorney General, however, is served with all moving papers in support of the motion for approval, and expects to participate in a number of proceedings. The Attorney General has concluded that non-binding guidelines will assist the public by reducing litigation concerning the meaning of the new law and by enabling parties to follow the guidelines, thereby reducing the likelihood that the Attorney General will object to their settlement. The guidelines also will assist courts in reviewing settlements, particularly where a given court has not reviewed significant numbers of settlements in these cases. Even though the Settlement Guidelines portion of this rulemaking is non-binding, it must be adopted through an APA rulemaking process because it will affect the Attorney General’s policies, apply generally throughout the state, and involves a matter of serious consequence involving an important public interest. (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal4th 557; *Grier v. Kizer* (198) 219 Cal.App.3d 422.)

Although the Attorney General is not the Governor’s designated “lead agency” for implementation of Proposition 65, he is the official designated under SB 471 to review all settlements, and authorized to appear in settlement approval proceedings. Accordingly, he is the appropriate official to adopt Settlement Guidelines.

C. Summary of Proposed Regulation

The Proposed Regulation has three primary parts. First, it makes some changes to the existing reporting requirements. The existing requirements were written before the law required that settlements in Proposition 65 Private Enforcement Matters be approved by courts on noticed motion, and the timing and nature of the required submissions needed to be modified to fit that process. In addition, since other actions in which Proposition 65 violations are alleged have been added to the existing reporting requirements, changes needed to be made in the regulation to so state.

Second, it adopts binding requirements for the Certificate of Merit. These requirements set forth the form and content of the required certification, define the specific scope of the certification, and also identify the type of supporting documentation that is necessary.

Third, it adopts guidelines to be used by the Attorney General, parties to litigation, and courts, in crafting and reviewing Proposition 65 settlements. These guidelines cover issues such as penalties, the form and content of clear and reasonable warnings, and evaluation of attorney's fee awards.

AUTHORITY AND REFERENCE

The Department of Justice proposes to amend the regulations contained in sections 3000 through 3008 of Title 11 of the California Code of Regulations, and proposes to adopt sections 3100 through 3204 of Title 11 of the California Code of Regulations, pursuant to the authority granted in Health and Safety Code sections 25249.7(e) and (f). The statute being implemented, interpreted and made specific is Chapter 578, Statutes of 2001, amending Health and Safety Code sections 25249.7(e) and (f).

DISCLOSURES AND DETERMINATIONS REGARDING THE REGULATIONS

1. Regulations Mandated by Federal Law (Government Code § 11346.2(c).): This regulation is not mandated by federal law or regulations.
2. Other Statutory Requirements (Government Code § 11346.5(a)(4).): There are no other statutory requirements specific to this agency or type of regulation.
3. Local Mandate Determination (Government Code § 11346.5(a)(5).): These regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
4. Fiscal Impact (Government Code § 11345.5(a)(6).):
 - a. There are no costs to any local agency or school district for which Government Code sections 17500–17360 require reimbursement.
 - b. There are no other non-discretionary costs or savings that would be imposed on local agencies.
 - c. There are uncertain costs to the Attorney General for implementing the new law, which will be absorbed during the 2001–2002 fiscal year. There are no other costs to any other state agency.
 - d. There are no costs or savings in federal funding to the state.
5. Effect on Housing costs (Government Code § 11346.5(a)(12).): There is no significant effect on housing costs.
6. Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete (Government Code §§ 11346.3(a), 11346.5(a)(7), 11346.5(a)(8).): The Department of Justice has initially determined that there will be no such impacts.
7. Assessment Regarding Effect on Jobs/Businesses (Government Code § 11346.5(a)(10).):
 - (a) The creation or elimination of jobs within the State of California: None.
 - (b) The creation of new businesses or the elimination of existing businesses within the State of California: None.
 - (c) The expansion of businesses currently doing business within the State of California: None.
8. Cost Impacts on Representative Person or Business (Government Code § 11346.5(a)(9).): The proposed regulations affect private persons who bring certain civil actions in the public interest. The cost of filing certain documents with the Attorney General and filling out a form concerning those documents should be minor. Costs associated with the filing and support of a motion for approval of settlements with the court may be greater, but are mandated by the statute, not by this regulation. The costs associated with filing a motion for judicial approval of a settlement could be \$1,500 (based on 15 hours of attorney time at \$100 per hour), but the filing of the motion is mandated by the statute.
9. Effect on Small Business: Pursuant to 1 CCR section 4, DOJ has determined that this proposed regulation affects small business. Accordingly:
 - (A) A concise plain English policy statement overview regarding the proposed regulation that explains the broad objectives of the proposed regulation is included in this notice;
 - (B) The express terms of the proposed action written in plain English are available from the agency contact person named in this notice.
10. Alternatives considered (Government Code § 11346.5(a)(14).): DOJ must determine that no reasonable alternative considered by DOJ would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.
11. Availability of Statement of Reasons, Express Terms, and Information: DOJ has prepared an initial statement of reasons for the proposed

action, has available all the information upon which the proposal is based (the rulemaking file), and has available the express terms of the proposed action. The rulemaking file for this proposed regulatory action will be maintained at the Office of the Attorney General, 1515 Clay Street, 20th Floor, and is available for public review during the Office of the Attorney General's normal business hours (Monday through Friday, 8:30 a.m. to 5:00 p.m.). Requests to review the rulemaking file should be directed to the agency contact person named in this notice. When the rulemaking is completed, a Final Statement of Reasons for the proposed action will be completed, and it will be available, along with all of the other information described above, at the same address.

12. Availability of changes to text: The full text of a regulation changed pursuant to Government Code section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.
13. Internet Access (Government Code §§ 11346.4(a)(6), 11346.5(a)(20): The text of the Proposed Regulation and this statement may be accessed at the Attorney General's Website, doj.ca.gov.

TITLE 13. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER TECHNICAL STATUS AND PROPOSED REVISIONS TO MALFUNCTION AND DIAGNOSTIC SYSTEM REQUIREMENTS AND ASSOCIATED ENFORCEMENT PROVISIONS FOR 2004 AND SUBSEQUENT MODEL YEAR PASSENGER CARS, LIGHT-DUTY TRUCKS, AND MEDIUM-DUTY VEHICLES AND ENGINES (OBD II)

The Air Resources Board (the "Board" or "ARB") will conduct a public hearing at the time and place noted below to review the technical status and implementation of California's OBD II requirements. The Board will consider amendments to the OBD II regulation to update the regulation to account for newer emission control technologies and lower tailpipe standards, to increase the amount of standardized data available to repair technicians and Inspection and Maintenance (I/M) inspectors, to clarify the regulation where necessary, to adopt more specific enforcement provisions, and to improve the effectiveness of the regulation for future model year vehicles.

DATE: April 25, 2002

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
1001 "I" Street
Auditorium, Second Floor
Sacramento, Ca 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., April 25, 2002, and may continue at 8:30 a.m., April 26, 2002. This item might not be considered until April 26, 2002. Please consult the agenda for the meeting, which will be available at least ten days before April 25, 2002, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact the Clerk of the Board at (916) 322-5594, or TDD (916) 324-9531 or (800) 700-8326 for TDD calls from outside the Sacramento area by April 1, 2002, to ensure accommodation.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of title 13, California Code of Regulations (CCR) section 1968.2 to supersede the general OBD II requirements as set forth in title 13, CCR section 1968.1 for 2004 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles and engines; and proposed adoption of title 13, CCR section 1968.5 to supersede the general enforcement procedures as set forth in title 13, CCR sections 2100-2149, as they apply to OBD II-related enforcement, and section 1968.1(i) for 2004 and subsequent model year model year passenger cars, light-duty trucks, and medium-duty vehicles and engines.

Documents Incorporated by Reference:

International Standards Organization ¹ (ISO) 9141-2, "Road vehicles—Diagnostic Systems—CARB Requirements for Interchange of Digital Information," February, 1994.

ISO 14230-4, "Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems," June, 2000.

ISO 15765-4, "Road Vehicles—Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems," December, 2001.

¹ Copies of ISO documents are available through ISO by mail at Copyright Manager, ISO Central Secretariat, 1 rue de Varembe, 1211 Geneva 20 Switzerland; by phone at +41 22 749 0111; by fax at +41 22 734 1079; or by e-mail at iso@iso.ch.

ISO 15031-5, "Road Vehicles—Communication between vehicle and external test equipment for emission-related diagnostics—Part 5: Emission-related diagnostic services," December, 2001.

Society of Automotive Engineers² (SAE) Recommended Practice J1850, "Class B Data Communication Network Interface," May, 2001.

SAE Recommended Practice J1930, "Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms," May, 1998.

SAE Recommended Practice J1962, "Diagnostic Connector," February, 1998.

SAE Recommended Practice J1978, "OBD II Scan Tool," February, 1998.

SAE Recommended Practice J1979, "E/E Diagnostic Test Modes," September, 1997.

SAE Recommended Practice J2012, "Recommended Practice for Diagnostic Trouble Code Definitions," March, 1999.

Speed Versus Time Data for California's Unified Driving Cycle, December 12, 1996.

Air Resources Board (ARB) Manufacturers Advisory Correspondence (MAC) No. 99-06, "Certification of Direct Ozone Reduction Technologies," December 20, 1999.

ARB Mail-Out #95-20, "Guidelines for Compliance with On-Board Diagnostics II (OBD II) Requirements," May 22, 1995.

Background: Section 1968.1 was originally adopted by the Board on September 12, 1989, requiring manufacturers to implement second generation on-board diagnostic systems on new motor vehicles. The regulation was first implemented beginning with the 1994 model year, and requires that essentially all new 1996 and later model year passenger cars, light-duty trucks, and medium-duty vehicles and engines be equipped with OBD II systems. The section specifically requires monitoring of engine misfire, catalysts, oxygen sensors, evaporative systems, exhaust gas recirculation (EGR), secondary air systems, fuel systems, and all electronic powertrain components that can affect emissions when malfunctioning. The regulations also require OBD II systems to provide specific diagnostic information in a standardized format through a standardized serial data link on-board the vehicles.

In 1989, when initially adopting section 1968.1, the Board directed the staff to provide an update within two years on the progress of manufacturers in designing and implementing monitoring systems to meet the OBD II requirements. It further directed the

staff to propose any modifications to the regulations that were deemed necessary based on industry progress to date. On September 12, 1991, the staff reported to the Board and proposed a number of modifications to address manufacturers' implementation concerns, to clarify misunderstood regulatory language, and to enhance the effectiveness of the requirements in some areas. The Board considered further amendments to the OBD II regulations on July 9, 1993, in response to a Petition from Ford Motor Company. At the Hearing, the Board adopted amendments to provide limited compliance relief to manufacturers that attempt in good faith to meet the requirements in full but are unable to certify a fully compliant system.

Another update on manufacturers' progress towards meeting the OBD II requirements was held on December 8, 1994. Again, the Board adopted modifications to the regulations to address manufacturers' implementation concerns, strengthen specific monitoring requirements, and clarify regulatory language. The Board last adopted amendments to the regulations on December 12, 1996, to improve and clarify the monitoring requirements where needed, to add new monitoring requirements, to improve the availability of service information, and to address some issues associated with the implementation of OBD II into Inspection and Maintenance (I/M) programs. By this time, manufacturers and ARB staff had gained considerable experience with OBD II systems, which had, in the great majority of instances, been working reliably in-use to detect emission-related malfunctions.

In addition, at the time that the OBD II regulation was initially adopted, the ARB envisioned that the regulation would be enforced under the general enforcement procedures set forth in title 13, CCR sections 2100–2149, with reference to the provisions of section 1968.1(i). Manufacturers have been on notice since the initial adoption of the OBD requirements that the ARB staff would enforce OBD II regulation after its effective date, and that appropriate remedies, including recall, would be ordered for noncompliance.

Staff Proposal: Since the Board last adopted amendments to the regulation in 1996, staff and manufacturers have identified areas in which modifications to section 1968.1 would provide for improved monitoring system performance. Thus, the staff is proposing the adoption of section 1968.2 to supersede section 1968.1 for 2004 and subsequent model year model year passenger cars, light-duty trucks, and medium-duty vehicles and engines. While most of the monitoring requirements in section 1968.1 are being carried over into section 1968.2, the proposed regulation reflects substantial editing and reorganiza-

² Copies of SAE documents are available through SAE Customer Sales and Support, 400 Commonwealth Drive, Warrendale, PA 15096-0001, U.S.A.; by phone at 724-776-4970; by fax at 724-776-0790; by e-mail at publications@sae.org; or by website at <http://www.sae.org>.

tion to provide improved clarity. The proposed regulation also includes new requirements that apply explicitly to 2004 and subsequent model year vehicles as well as reflects the increased use of certain new or existing emission control technologies. These proposed requirements would further increase the effectiveness of OBD II systems in detecting emission-related malfunctions. Among the provisions being proposed are:

- Catalyst system monitoring of oxides of nitrogen (NOx) conversion efficiency in addition to the current requirement for hydrocarbon (HC) conversion efficiency (section 1968.2(e)(1)).
- Revisions to the misfire monitoring requirements to clarify when manufacturers are allowed to disable misfire monitoring (section 1968.2(e)(3)).
- Revisions to the evaporative system monitoring requirements to allow greater flexibility for manufacturers in detecting larger sized leaks (section 1968.2(e)(4)).
- Revisions to require secondary air system monitoring for proper airflow during vehicle warm-up (section 1968.2(e)(5)).
- Continuous monitoring for oxygen sensor circuit faults (section 1968.2(e)(7)).
- Increased frequency of rationality monitoring for input comprehensive components (section (e)(16)).
- Expansion of monitoring requirements to include emission sources, such as fuel-fired passenger compartment heaters and on-board reformers (section (e)(17)).
- Specific monitoring requirements for Variable Valve Timing (VVT) systems (section 1968.2(e)(13)), cold start emission reduction strategies (section 1968.2(e)(11)), air conditioning system components (section (e)(12)), and direct ozone reduction systems (section 1968.2(e)(14)).
- New monitoring requirements for diesel vehicles to address emissions resulting from catalyst system malfunctions (section 1968.2(e)(1.5)) and particulate matter trap malfunctions (section 1968.2(e)(15)).
- Allowance for SULEV applications to use a malfunction criterion of 2.5 times, instead of 1.5 times, the applicable FTP standards wherever the latter criterion is required in section 1968.2(e) (section 1968.2(e)(18)).
- A standardized methodology for determining the frequency of monitor operation during in-use driving and a minimum operating frequency for most non-continuous monitors (section 1968.2(d)(3.2)).

- Requirements to improve the availability of diagnostic information to repair technicians to assist them in effectively diagnosing and repairing vehicles (section 1968.2(f)).
- Modifications to existing standardization requirements to assist the implementation of OBD II into the I/M program (section 1968.2(f)).
- New requirements for post-assembly line testing of production vehicles to verify compliance with the requirements of section 1968.2 (section 1968.2(j)).
- Other minor clarifications to improve the regulation.

Finally, after more than eight years of experience in implementing and enforcing OBD II requirements, the staff is proposing the adoption of section 1968.5, which details in-use enforcement provisions that apply specifically to OBD II systems that conform to the proposed OBD II regulation, section 1968.2. More specifically, section 1968.5 would supersede the general enforcement procedures as set forth in title 13, CCR sections 2100–2149, as they apply to OBD II-related enforcement, and section 1968.1(i) for 2004 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles and engines. The proposed enforcement provisions would better address and identify the special circumstances involved in in-use testing and the issuing and implementing of remedial orders to correct any identified deficiencies that are unique to OBD II systems.

To address these objectives, the staff is proposing detailed procedures for in-use enforcement testing of OBD II systems installed on 2004 and subsequent model year vehicles. In addition, the proposal sets forth procedures that would be followed by the ARB if, after such testing, OBD II systems of a tested vehicle group were found to be nonconforming. Among other things, the procedures would authorize the ARB to take remedial action, which may include recall of vehicles in which the nonconforming systems are installed and assessment of monetary penalties against the affected manufacturer. Finally, staff is proposing a specific protocol to be followed by the Executive Officer and affected manufacturers in implementing remedial action plans.

Comparable Federal Regulations: In February 1993, the United States Environmental Protection Agency (U.S. EPA) promulgated final on-board diagnostic requirements for federally certified vehicles. (40 CFR Part 86, sections 86.094-2, 86.094-17, 86.094-18(a), 86.094-21(h), 86.094-25(d), 86.094-30(f), 86.094-35(I), 86.095-30(f), 86.095-35(I); see 58 Fed.Reg. 9468-9488 (February 19, 1993).) The requirements were last modified with a final rule

published on December 22, 1998 (63 Fed.Reg. 70681-70697). A central part of the federal regulation is that, for purposes of federal certification of vehicles, the U.S. EPA will deem California-certified OBD II systems to comply with the federal regulations.

On October 3, 1996, the U.S. EPA formally granted California's request for a waiver regarding the OBD II regulation, as last amended in December 1994,³ recognizing that the OBD II regulation is at least as stringent in protecting public health and welfare as the federal regulation, and that unique circumstances exist in California necessitating the need for the state's own motor vehicle regulations program.

The federal OBD requirements are comparable in concept and purpose with California's OBD II regulation; however, differences exist with respect to the scope and stringency of the requirements of the two regulations. More specifically, California's current OBD II regulations are generally more stringent than the comparable federal requirements. Under OBD II requirements, manufacturers must implement monitoring strategies for essentially all emission control systems and emission-related components, as mentioned in the above summary. Generally, the OBD II regulation requires that components be monitored to indicate malfunctions when component deterioration or failure causes emissions to exceed 1.5 times the applicable tailpipe emission standards of the certified vehicle. However, the regulation also requires that components be monitored for functional performance if the failure of such components does not cause emissions to exceed the 1.5 times the standards threshold.

The federal requirements, in contrast, require monitoring of the catalyst, engine misfire, evaporative emission control system, and oxygen sensors. Other emission control systems or components, such as EGR and secondary air systems, need only be monitored if by malfunctioning, vehicle emissions exceed 1.5 times the applicable tailpipe standards. This also applies to after-treatment devices on diesel applications, such as catalyst systems and particulate matter traps.

With the proposed adoption of section 1968.2, ARB staff is proposing that OBD II be applied to the next generation of low emission vehicles, and thus, in general, would be going even further in making the OBD II regulations more stringent relative to federal requirements. For example, the proposed OBD II regulations would require catalyst system monitoring of NOx conversion efficiency, which federal regulations do not require.

³ *California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Decision*, dated October 3, 1996, 61 Fed.Reg. 53371-53372.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code section 11346.5(a)(5), the Executive Officer has determined that the proposed regulations will not impose a mandate on local agencies or school districts. The Executive Officer has further determined pursuant to Government Code section 11346.5(a)(6) that the proposed regulations will result in some additional costs to the Air Resources Board but not to other state agencies. In addition, the Executive Officer has also determined pursuant to Government Code section 11346.5(a)(6) that the proposed regulatory action will not create a cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code or other nondiscretionary costs or savings imposed on local agencies. The Executive Officer further determined that the proposed regulations will not result in costs or savings in federal funding to the state.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on certain private persons and businesses. The Executive Officer has made an initial determination that the adoption of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with business in other states. The Executive Officer has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The businesses to which the proposed requirements are primarily addressed and for which compliance would be required are manufacturers of California motor vehicles. There are presently 34 domestic and foreign corporations that manufacture California-certified passenger cars, light-duty trucks, and medium-duty gasoline and diesel fueled vehicles that

are equipped with OBD II systems. Only one motor vehicle manufacturing plant (NUMMI) is located in California.

For motor vehicle manufacturers to comply with the proposed regulatory action, the costs are expected to be negligible. The proposed revisions consist primarily of modifications to existing computer software and additional verification testing. Since manufacturers would be provided sufficient leadtime to incorporate the proposed changes when redesigning vehicles to comply with the Low Emission Vehicle II (LEV II) program requirements, incorporation and verification of the revised OBD II software would be accomplished during the regular design process at no additional cost. As a result, costs to manufacturers, and therefore consumers, is anticipated to remain virtually unchanged. Similarly, because manufacturers are fully expected, and required, to comply with the regulations, enforcement costs to manufacturers should also be negligible.

Also affected would be businesses licensed by the Bureau of Automotive Repair as I/M facilities that perform in-use smog check tests using OBD II systems. The proposed regulatory action is expected to result in some increased costs to licensed I/M service stations. The proposed regulatory action would allow for the implementation of a new OBD II communication protocol called CAN (Controller Area Network) on vehicles, which provides more reliable, rapid and less expensive communication between the various electronic systems on vehicles. To accommodate CAN, however, each I/M station would need to upgrade existing equipment at a one-time cost of about \$500. The total cost would be approximately \$5 million for all of the 10,000 I/M stations in California. Use of the CAN protocol would enhance information available to repair technicians, thereby leading to improved and less expensive repairs which would generate savings for consumers.

Consistent with this, in developing this regulatory proposal, the ARB staff has found that the proposed regulation will pose no adverse economic impact on private persons and businesses as consumers. The Executive Officer has determined that there will be no, or negligible, potential cost impact on representative private persons or businesses as a result of the proposed regulatory action. The proposed requirements are not expected to increase the rate or the cost of vehicle repairs, so no cost impact on consumers is expected. The proposed requirements would provide improved OBD II information and encourage manufacturers to build more durable vehicles, which may result in savings for consumers.

As set forth above with respect to the additional cost to I/M facilities, the Executive Officer has determined that the proposed requirements will affect small businesses.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action should have minor or no impact on the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within California, or the expansion of businesses currently doing business within California.

The proposed regulatory action would continue to require motor vehicle manufacturers to file written reports as is presently required in title 13, CCR section 1968.1. Although the proposed regulation would add several new reporting requirements not present in section 1968.1, such as the requirement to verify production vehicle performance, the requirements should have a negligible impact on vehicle costs. Moreover, the proposed regulation provides motor vehicle manufacturers with greater flexibility in filing certification documents, which should result in savings to the manufacturers. The Executive Officer has determined, pursuant to Government Code section 11346.3(c) and 11346.5(a)(11), that the reporting requirements that apply to the motor vehicle manufacturers are necessary for the health, safety, or welfare of the people of the state. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has been otherwise identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action that includes a summary of the environmental and economic impacts of the proposal, and supporting technical documentation.

Copies of the ISOR and the full text of the proposed regulatory language may be obtained from the ARB's Public Information Office, Environmental Services Center, 1001 "I" Street, First Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing (April 25, 2002).

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the web site listed below.

Inquiries concerning the substance of the proposed regulation should be directed to the agency contact persons for this rulemaking: Mike Regenfuss, Staff Air Pollution Specialist, at (626) 575-7004 or e-mail (mregenfu@arb.ca.gov), or Mike McCarthy, Manager, Advanced Engineering Section, Mobile Source Control Division, at (626) 575-6615 or e-mail (mmccarth@arb.ca.gov).

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Marie Kavan, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the agency contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board's ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

This notice, the ISOR, and subsequent regulatory documents, including the FSOR once it has been prepared pursuant to Government Code section 11346.9(a), will also be available on the ARB internet site for this rulemaking at: <http://www.arb.ca.gov/regact/obd02/obd02.htm>.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions must be received by no later than 12:00 noon, April 24, 2002 and addressed to the following:

Postal Mail is to be sent to:

Clerk of the Board

Air Resources Board

1001 "I" Street, 23rd Floor

Sacramento, California 95814

Electronic mail is to be sent to: obdii@listserv.arb.ca.gov and received at the ARB no later than 12:00 noon, April 24, 2002.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB no later than 12:00 noon, April 24, 2002.

The Board requests, but does not require, that 30 copies of any written submission and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring to the attention of the staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in sections 39600, 39601, 43000.5, 43013, 43016, 43018, 43100, 43101, 43104, 43105, 43105.5, 43106, 43154, 43211, and 43212 of the Health and Safety Code. This action is proposed to implement, interpret and make specific sections 39002, 39003, 39010-39060, 39515, 39600-39601, 43000, 43000.5, 43004, 43006, 43013, 43016, 43018, 43100, 43101, 43102, 43104, 43105, 43105.5, 43106, 43150-43156, 43204, 43211, and 43212 of the Health and Safety Code.

HEARING PROCEDURES AND AVAILABILITY OF MODIFIED TEXT

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Board's Public Information Office, 1001 "I" Street, Sacramento, CA 95814, (916) 322-2990.

TITLE 13. NEW MOTOR VEHICLE BOARD

NOTICE OF PROPOSED ACTION

NOTICE IS HEREBY GIVEN that the New Motor Vehicle Board of the State of California ("Board"), pursuant to the authority vested in it by Section 3050, subdivision (a) of the Vehicle Code, proposes to add sections 551.14, 551.15, 551.16, 551.17, and to amend sections 553.40 and 595 to the regulations contained in Title 13 of the California Code of Regulations in order

to offer an additional type of dispute resolution, informal mediation, for licensees within the Board's jurisdiction.

PROPOSED REGULATORY ACTION

The Board proposes to add sections 551.14, 551.15, 551.16, 551.17, and to amend sections 553.40 and 595, after consideration of all comments, objections, and recommendations regarding the proposed action.

PUBLIC DISCUSSIONS PRIOR TO NOTICE

Prior to the publication of this notice, the Board considered the proposed text of the regulations at a noticed General meeting held on November 28, 2000. Ten days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulations was mailed to the Board's Public Mailing List, a list of approximately 150 individuals, entities and governmental agencies who have requested notification by the Board of pending Board matters. No comments by the public were received at the November 28, 2000, meeting, and no further public discussions were held prior to publication of the notice.

PUBLIC HEARING

A public hearing to receive oral or written comments on these regulations will be held at the following time and place:

DATE: April 29, 2002

TIME: 10:00 a.m.

PLACE: New Motor Vehicle Board
Hearing Room #2
1507 21st Street, Suite 330
Sacramento, California 95814

At the hearing, any person may present statements or arguments orally or in writing via U.S. Postal Service mail, facsimile or electronic mail, relevant to the proposed action described in the Informative Digest. The hearing will continue until all oral and written comments are presented. The Board requests but does not require that a person who makes comments at the hearing also submit a written copy of their testimony at the hearing. Any person or business submitting a comment to the proposed regulation has the right to request a copy of the final statement of reasons.

WRITTEN COMMENT PERIOD

Notice is also given that any person interested may present statements or arguments in writing via U.S. Postal Service mail, facsimile or electronic mail, relevant to the proposed amendments to the agency officer named below at the address identified below on or before 5:00 p.m. on April 29, 2002. The Board will consider only comments received at the Board offices by that time. Submit comments to:

Robin P. Parker, Senior Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95814
(916) 445-2080
Fax: (916) 323-1632
E-mail: www.nmvb@pacbell.net

The official record of the rulemaking procedure will be closed at 5:00 p.m. following the conclusion of the public hearing on April 29, 2002. Written comments received after 5:00 p.m. on April 29, 2002, will not be considered unless an extension of time in which to receive written comments is announced at the public hearing.

AUTHORITY AND REFERENCE

Authority cited: Sections 3016, 3050(a), and 3050.5, Vehicle Code. Reference: Sections 3050(c), 3051, 3060, and 3062, Vehicle Code; Sections 11420.30 and 11470.50, Government Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code section 3050, subdivision (a) authorizes the Board to adopt rules and regulations governing such matters as are specifically committed to it.

It is the mission and vision of the Board, as adopted by its members, to: resolve disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner; safeguard for the Board's constituency, a fair, expeditious and efficient forum for resolving new motor vehicle industry disputes which ultimately improves relations and reduces the need for costly litigation; and, develop methods that further improve the delivery of Board services in a timely and cost-effective manner.

The Board proposes to add sections 551.14, 551.15, 551.16, and 551.17 to the regulations contained in Title 13 of the California Code of Regulations in order to establish a procedure for requesting informal mediation prior to initiating a formal petition, to establish a mechanism which allows the parties to request discovery in informal mediation, to explain the process for informal mediation, and to create a mechanism to allow for the conversion of informal mediation to a petition.

The Board proposes to amend section 553.40 to the regulations contained in Title 13 of the California Code of Regulations to extend the filing fee provisions to parties requesting informal mediation. Litigants that file and respond to a petition, appeal, or protest each pay a filing fee of \$200.00. The filing fee would be extended to parties requesting informal mediation as well as parties responding to the request. Under the

proposed regulatory text in section 551.17(d), a party seeking to convert an informal mediation to a petition would not be charged an additional filing fee.

The Board proposes to amend section 595 to the regulations contained in Title 13 of the California Code of Regulations to extend the section pertaining to the format of papers filed with the Board to requests for informal mediation. It further clarifies that the number of the proceeding in a protest is assigned immediately upon filing by the secretary. Language is deleted that allowed the secretary to postpone assigning a number in a protest proceeding until a notice of appearance was filed and all filing fees were paid.

The current Board procedures for requesting informal mediation are ad hoc. The proposed regulation would formalize the procedure and be made available to more parties as an additional mechanism for dispute resolution. If the informal mediation is successful, no petition is filed with the Board. If it is not successful, then the proceeding can be converted to a petition. This reduces the costs incurred by all. It also fosters positive relations between the parties. Given the nature of the franchisor-franchisee relationship, this is important. Also, with informal mediation no formal action is filed by one party against another. Informal mediation is cost-effective, efficient, timely, and nonadversarial.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following determinations:

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments will have no effect on small businesses. This determination was made because no small businesses are legally required to comply with the regulation, are legally required to enforce the regulation, or derive a benefit from or incur an obligation from the enforcement of the regulation.

LOCAL MANDATE

The proposed regulatory action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT STATEMENT

The proposed regulatory action imposes (1) no cost or savings to any state agency; (2) no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code; (3) no other non discretionary cost or savings to local agencies; and (4) no costs or savings in federal funding to the state.

EFFECT ON BUSINESSES

The Board has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting

business including the ability of California businesses to compete with businesses in other states. No studies or data were relied upon in making this determination.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The cost impact of the proposed regulatory action is expected to be inconsequential on directly affected private persons. The Board expects no cost impact on directly affected businesses. The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES

The adoption of this regulation will neither create nor eliminate jobs or businesses in the State of California, will not result in the elimination of existing businesses, and will neither reduce nor expand businesses currently doing business in the State of California.

EFFECT ON HOUSING COSTS

The proposed regulatory action will have no impact on housing costs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

At the November 28, 2000, General meeting, wherein the Board preliminarily adopted the proposed regulatory text, no other alternatives were considered. However, the Board President, Robert T. (Tom) Flesh invited and encouraged the submission of written and oral comments. Furthermore, Mr. Flesh indicated that the Board instructing staff to go forward with the proposed rulemaking, did not necessarily indicate final Board action. If any written or oral comments were received, the full Board would consider the comments and reconsider the text of the proposed rulemaking. Lastly, if the staff decided that modifications to the proposed text were necessary, the Board would consider those modifications at a noticed meeting. If there were no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

CONTACT PERSON/BACKUP
CONTACT PERSON

Please direct inquiries concerning the substance of the proposed action, requests for copies of the proposed text (the "express terms") of the regulation, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to:

Robin P. Parker, Senior Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95814
Telephone: (916) 445-2080

In the event the Contact Person is not available, inquiries concerning the substance of the proposed action, requests for copies of the proposed text (the "express terms") of the regulation, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based may be directed to the following Backup Contact Person:

Howard Weinberg, General Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95814
Telephone: (916) 445-2080

AVAILABILITY OF INFORMATION
VIA THE INTERNET

Information regarding the proposed amendments may be obtained from the Board's website: www.nmvb.ca.gov.

STATEMENT OF REASONS AND TEXT OF
PROPOSED REGULATIONS

The Board has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The express terms of the proposed action are written in plain English and are available from the contact person named in this notice. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline to indicate additions, and strikeout to indicate deletions from, the California Code of Regulations. The contact person identified in this notice shall also make available to the public upon request the initial statement of reasons and the location of public records, including reports, documentation, and other materials, related to the proposed action.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period and public hearing, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the

originally proposed text, the full modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the Board adopts the resulting regulation. Requests for copies of a modified regulation should be addressed to the Board contact person identified in this notice. The Board will accept written comments on the modified regulation for 15 days after the date on which it is first made available to the public.

AVAILABILITY OF FINAL
STATEMENT OF REASONS

Requests for copies of the final statement of reasons may be directed to the Contact Person or the Backup Contact Person listed in this Notice, or may be obtained from the Board's website: www.nmvb.ca.gov.

**TITLE 15. DEPARTMENT
OF CORRECTIONS**

NOTICE OF PROPOSED REGULATIONS

NOTICE IS HEREBY GIVEN that the Director of the Department of Corrections (CDC), pursuant to rulemaking authority granted by Penal Code (PC) Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend and/or adopt sections 3220, 3220.1, 3220.2 and 3220.3 in the California Code of Regulations (CCR), Title 15, Division 3 relating to Recreation and Physical Education programs.

PUBLIC HEARING

Date and Time: May 13, 2002 from 10 to 11 A.M.

Place: Department of Water Resources
Auditorium
1416 Ninth Street
Sacramento, CA 95814

Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period will close May 13, 2002 at 5 P.M. Any person may submit public comments in writing (by mail, by fax or by

e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916)322-3842; or by e-mail at pmchenry@executive.corr.ca.gov before the close of the comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

**Rick Grenz, Chief,
Regulation and Policy Management Branch
Department of Corrections
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 322-9702**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Peggy McHenry, Chief,
Policy Management Unit
Telephone (916) 324-6775**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Tim Toth, Education Unit
Institutions Division
Telephone (916) 324-4614**

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

**COST IMPACTS ON REPRESENTATIVE
PRIVATE PERSONS OR BUSINESSES**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT ON BUSINESS**

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse

economic impact on small business because they are not affected by the internal management of the state prisons.

**ASSESSMENTS OF EFFECTS ON JOB AND/OR
BUSINESS CREATION, ELIMINATION
OR EXPANSION**

The Department has determined that the proposed regulation will have no effect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

**AVAILABILITY OF PROPOSED TEXT AND
INITIAL STATEMENT OF REASONS**

The Department has prepared and will make available the text and the Initial Statement of Reasons of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, Initial Statement of Reasons, and the Notice of Proposed Action will also be made available on the Department's website <http://www.cdc.state.ca.us>.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

**AVAILABILITY OF CHANGES TO
PROPOSED TEXT**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept

written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of inmates.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action revises provisions governing Recreation and Physical Education programs permitted under Inmate Activities in the Rules and Regulations of the Director of Corrections (CCR Title 15, beginning with section 3220 and continuing through section 3223).

One set of changes simply involve updating the language of the article to more accurately reflect the character and scope of such programs being provided at the institutions and facilities operated by the Department. However, other changes are proposed to separately address three additional issues.

While inmates are already entitled to receive awards for participating in approved activities and contests, there is currently no specific time frame for the delivery of such awards. The reason for creating such language is to prevent the rejection of an inmate appeal of the non-delivery of an award due solely to a failure to satisfy the time constraints of the regular appeal process. In order to formalize the relationship between an adopted curriculum framework and the academic recreation, physical education and physical fitness training programs provided by the Department, the addition of a new CCR subsection is proposed. Finally, the adoption of yet another new subsection is required in order to clarify that the scope of recreation and physical education programs at Conservation Camps shall be compatible with camp operations, staffing and geographic location.

TITLE 15. DEPARTMENT OF CORRECTIONS

NOTICE OF PROPOSED REGULATIONS

NOTICE IS HEREBY GIVEN that the Director of the Department of Corrections (CDC), pursuant to rulemaking authority granted by Penal Code (PC) Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend section 3375.2 in the California Code of Regulations (CCR), Title 15, Division 3 relating to Private Architectural and Engineering Firm Selection Policy/ Selection of Professional Consulting Services.

PUBLIC HEARING

Date and Time: May 13, 2002, 9:00 a.m.–10:00 a.m.

Place: Department of Water Resources
Auditorium
1416 Ninth Street
Sacramento, CA 95814

Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period will close May 13, 2002 at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 322-3842; or by e-mail at pmchenry@executive.corr.ca.gov before the close of the comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

**Rick Grenz, Chief,
Regulation and Policy Management Branch
Department of Corrections
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 322-9702**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Peggy McHenry, Chief,
Regulation Management Unit
Telephone (916) 322-9702**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Sandy Schopflin, Manager
Day Labor and Professional Services Branch
Telephone (916) 322-9512.**

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business, because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Department has determined that the proposed regulation will have no affect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared and will make available the text and the Initial Statement of Reasons of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, Initial Statement of Reasons, and

the Notice of Proposed Action will also be made available on the Department's website <http://www.cdc.state.ca.us>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of inmates.

Penal Code Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action will incorporate into the Director's Rules amended regulations affecting Private Architectural and Engineering Firm Selection Policy/Selection of Professional Consulting Services.

- Section 3000, is being amended to broaden the existing definitions of "Firm" and "Small Business Firm." Section 3000 includes existing definitions of the term "Firm." The proposed definition includes landscape architecture, environmental services, land surveying or construction project management. The addition of these types of firms is meant to broaden the scope of firms/businesses from which the Department may select to perform professional consulting services.
- Section 3000 also includes an existing definition of "Small Business Firm." This action proposes to amend that definition to better define a small business firm regarding professional consulting services with whom the Department may do business.

- The existing heading of Title 15, Article 7 “Private Architectural and Engineering Firm Selection Policy” has been amended and renamed to read “Selection of Professional Consulting Services.” The heading is changed to be less specific so to include other professional consulting firms along with private architectural and engineering firms when the Department is requesting submittal of qualification for services.
- This provision is amended pursuant to Penal Code (PC) Section 5055. This PC section states that whenever power is granted to the Director of Corrections or a duty is imposed upon the Director, the power may be exercised or the duty performed by a Deputy of the Director or by a person authorized pursuant to law by the Director. Therefore, for clarification purposes, the term “or designee” is being added to the language.
- The proposed action makes optional the departmental procurement services choice of retaining a firm for one year or longer to complete the contracted services. Specific language is amended to be consistent with the language used throughout Article 7.
- This action allows the Department to determine, in the best interest of the State, how to proceed if fewer than three qualified submittals for the selection of Architects or Engineers, or other professional consulting firms are received.

TITLE 16. BOARD OF PHARMACY

NOTICE IS HEREBY GIVEN that the Board of Pharmacy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, 400 R Street, Sacramento, CA 95814 at 11 a.m. on April 25, 2002.

Written comments must be received by the Board of Pharmacy at its office no later than 5 p.m. on April 22, 2002, or must be received by the Board of Pharmacy at the hearing. Comments may also be faxed to (916) 327-6308 or emailed to Virginia_Herold@dca.ca.gov. Comments may be submitted by mail to:

Board of Pharmacy
Attn: Virginia Herold
400 R Street, Suite 4070
Sacramento, CA 95814

The Board of Pharmacy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify the proposal if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full

text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 4005 and 4122 of the Business and Professions Code and to implement, interpret or make specific Sections 4005 and 4122 of said Code, the California Board of Pharmacy is considering changes to Division 17 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend section 1707.2

Section 4005 of the California Business and Professions Code directs the board to adopt regulations “as may be necessary for the protection of the public.”

Section 4122 of the Business and Professions Code requires the board to develop a notice to consumers about the availability of prescription price information, the possibility of generic drug product selection and a description of the type of services provided by pharmacies. The board is required to adopt the wording of the notice by regulation, which it has done in Section 1707.2.

The board publishes this information on a poster that is distributed to pharmacies for posting in an area where it can be seen by customers. Alternatively the law allows a pharmacy to provide a written receipt that contains the required information of the notice as an alternative to displaying the poster.

Since the early 1980s, the board’s notice has remained the same. The board proposes to amend the notice to consumers as described below.

Additionally, the board proposes to make two technical amendments to correct outdated references to the California Business and Professions Code contained in section 1707.2 that were changed in 1996 by Chapter 890, and make simple grammatical changes to other sections to improve consistency throughout the text of this section.

The board proposes to amend and adopt into Title 16, changes to Section 1707.2:

In subdivision (f) to remove certain information that provided little consumer benefit and instead list questions patients should know the answers to before taking any prescription medication. The board believes that this information will improve patient compliance with their prescribed drug regimens and result in improved health care.

In subdivision (b)(3) to correct an outdated reference to the Business and Professions Code that was changed in 1996 by Chapter 890; specifically converting section 4047.9 to section 4074.

In subdivision (f) to correct an outdated reference to the Business and Professions Code section 4333, which was recodified in 1996 (by Chapter 890) as section 4122.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: \$20,000 in one time costs to the Board of Pharmacy to publish and distribute the revised "Notice to Consumers" posters to pharmacies. This is an important consumer education piece and the board will use existing resources to finance this expenditure.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board of Pharmacy has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses, eliminate jobs or existing businesses or the expand businesses in California.

Cost Impact on Representative Private Person or Business: The Board of Pharmacy estimates extremely minor cost impacts from the proposed regulation upon private persons. The board will publish and distribute the posters to pharmacies, which must then display the posters in or near the licensed premises area where it can be seen by patients. Alternatively, pharmacies wishing to print the notice on receipts will incur one-time costs to modify the text message. The board will continue to provide pharmacies with posters in the future should a poster need to be replaced. The public will benefit from these requirements by having at their ready access in a pharmacy questions that when answered, will provide patients with greater knowledge about their prescription drugs and how to take them efficaciously. It will foster a quality dialogue between pharmacists and patients (or their agents)—a consultation that is required for new prescriptions (by existing section 1707.2(b)).

Effect on Housing Costs: The board has made an initial determination that the proposed regulation will not effect housing costs.

SMALL BUSINESS DETERMINATION

The Board of Pharmacy has determined that the proposed regulations would affect small businesses that are pharmacies in a minimal way by causing them to either display a new poster (which will be provided at no cost), or modify the text message that may be printed on a receipt.

CONSIDERATION OF ALTERNATIVES

The Board of Pharmacy must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

STATEMENT OF REASONS AND INFORMATION

The Board of Pharmacy has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons and other information, if any, may be obtained at the hearing or prior to the hearing upon request from the Board of Pharmacy at 400 R Street, Suite 4070, Sacramento, California 95814, and at the board's website (<http://www.pharmacy.ca.gov>).

AVAILABILITY AND LOCATION OF THE RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Board of Pharmacy at the address mentioned above.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons, once prepared, can be obtained by making a written request to the contact person named below or at the board's website (<http://www.pharmacy.ca.gov>).

CONTACT PERSON

Inquiries concerning the proposed administrative action may be addressed to Virginia Herold at the above address or at (916) 445-5014 ext. 4005.

The backup contact person is Patricia Harris (916) 445-5014 ext. 4004. The person designated to respond to questions on the substance of the regulatory proposal is Patricia Harris.

WEBSITE ACCESS

Materials regarding this proposal can be found at <http://www.pharmacy.ca.gov>.

TITLE 16. BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

NOTICE IS HEREBY GIVEN that the Board for Professional Engineers and Land Surveyors (hereinafter referred to as "the Board") is proposing to take the action described in the Informative Digest. Any persons interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held **April 26, 2002** at the **Courtyard Marriott Hotel, 530 Broadway, San Diego, California, 92101**. Written comments must be received by the Board at its office not later than 5:00 p.m. on **April 26, 2002**, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 6716, 6799, 8710 and 8805 to implement, interpret or make specific Sections 6795, 6799, 8801 and 8805 of said code, the Board is considering changes to Division 5 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Amend Section 407, Title 16, California Code of Regulations.

The Board for Professional Engineers and Land Surveyors is authorized by Business and Professions Code Sections 6799 and 8805 to establish the maximum application fees for licensure as a Professional Engineer and/or Professional Land Surveyor. The Board has determined that exam application and renewal fees must be increased to continue adminis-

tration of its exams and oversight of the engineer and land surveyor professions. Legislation enacted last year, Senate Bill 136 (Stats. 2001, Chapter 495), increased the maximum application fees for Professional Engineers and Land Surveyors from \$175 to \$400 and for certification as an Engineer-in-Training and for a Land Surveyor-in-Training from \$60 to \$100. SB 136 also reduced the license renewal period from every four years to every two years as authorized by Business and Professions Code Sections 6795 and 8801. These changes became effective January 1, 2002.

This proposal will amend Section 407 of the California Code of Regulations which identifies the specific fee amounts to be charged within the maximum fee levels stated in the Business and Professions Code. These fees were last increased in 1991, and they are now insufficient to cover the cost of administering the Board's exams. This proposal will amend Section 407 to reflect the increase in fees for applications, license renewals and temporary licenses as follows:

- (1) increase the professional engineer and professional land surveyor application fee to \$350;
- (2) increase the engineer-in-training and land-surveyor-in-training application fee to \$100;
- (3) decrease the licensure renewal period to every two years.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding to the State: The costs for the Board's application processing and exam administration are greater than application revenue received. An increase in the application fees will enable the Board to recover exam costs.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing business or the expansion of businesses in the State of California.

Cost Impact on Private Persons or Entities: The proposed regulations will affect individuals applying for registration as a Professional Engineer and/or Professional Land Surveyor as well as individuals who apply for certification as an engineer-in-training and/or land-surveyor-in-training by increasing the application fees. Individuals currently holding a Professional Engineers license with the State of California will be affected by the shorter license renewal period that will effectively increase the fee for renewal.

Housing Costs: None.

EFFECT ON SMALL BUSINESS

The proposed amendment does not place any new restrictions or requirements on individuals and/or small businesses. While the Board does not license businesses, but only individuals, some of its licensees do offer their professional services through business entities, some of which may be classified as small businesses. Because this proposed amendment will increase the application and renewal fees for Professional Engineers and Land Surveyors, small business entities who employ these individuals and/or use their services may experience a cost increase.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF THE PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board for Professional Engineers and Land Surveyors at 2535 Capital Oaks Drive, Suite 300, Sacramento, CA 95833.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the contact person named below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to Debbie A. Thompson at the above address or at (916) 263-2269, fax (916) 263-2246 or email Debbie_Thompson@dca.ca.gov.

The backup contact person is Nancy Eissler at (916) 263-2241. The person designated to respond to questions on the substance of the regulatory proposal is Debbie A. Thompson at (916) 263-2269.

Website Address: Materials regarding this proposal can be found at www.dca.ca.gov/pels/

TITLE 16. BUREAU OF AUTOMOTIVE REPAIR

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs/Bureau of Automotive Repair (hereinafter "Bureau") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at hearings to be held at the following locations on the following dates:

Southern California

April 24, 2002, 10:00 a.m.

Bureau of Automotive Repair
1180 Durfee Avenue, Suite 120
Conference/Training Room
South El Monte, CA 91733
and

Northern California

April 26, 2002, 10:00 a.m.

Bureau of Automotive Repair
10240 Systems Parkway
Executive Conference Room
Sacramento, CA 95827

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on April 26, 2002, or must be received by the Bureau at the above referenced hearings. The Bureau, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals

substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Sections 44001.3, 44001.5 and 44002, Health and Safety Code; and to implement, interpret or make specific Sections 44005, 44010.5, 44011, 44012, 44014.7, 44015, 44017, 44017.1, 44037.1, 44062.1, 44091, 44092, 44093, 44094 and 44095, Health and Safety Code; the Bureau is proposing to adopt the following changes to Article 11 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle emissions significantly affect air quality. Every part of the Smog Check Program (Program) is essential to help decrease air pollution, increase air quality in California, and meet stringent timelines set forth in the California State Implementation Plan (SIP) to comply with the federal Clean Air Act. The Consumer Assistance Program (CAP) is a critical and vital component of the Program.

The Repair Assistance option of CAP provides immediate and quantifiable results in improving air quality and mitigating the risk of vehicle owners driving unregistered vehicles. Registered vehicle owners are offered an alternative to illegally operating an unregistered or polluting vehicle by receiving state assistance for the repair of a high-polluting vehicle.

The Repair Assistance options objectives are:

- a. To assist the state in meeting the required emission reductions under the United States Environmental Protection Agency (USEPA) mandated SIP and to be in compliance with the federal Clean Air Act; and,
- b. To provide qualifying California vehicle owners with financial assistance to repair vehicles that fail biennial Smog Check inspections.

1. Consumer Assistance Program (CAP) Repair Assistance and Vehicle Retirement Options:

Since the inception of the CAP, consumer interest in the program in general and participation in the vehicle retirement option in particular, has exceeded projected levels. In fact, last fiscal year, BAR submitted a Budget Revision to increase its expenditure authority

in the vehicle retirement option from \$15.0 million to \$21.5 million to meet consumer demand. Even with this Budget Revision, BAR could not immediately assist all consumers seeking to retire their vehicles without exceeding its appropriation.

In the current fiscal year, consumer interest in the CAP remains strong, and BAR projects incurring \$43.6 million in total expenditures. Currently, BAR retires approximately 2,400 vehicles each month. At this rate, BAR projects disbursing at least \$26.0 million to consumers retiring their vehicles in this fiscal year, with the remainder (\$17.6 million) to be used for repair assistance and administration. However, the Governor's recent budget revisions (SBx3 1 and Abx3 1) transfer \$94 million from the High Polluter Repair or Removal Account (HPRRA)—which is the account that supports the CAP—to the General Fund to help reduce that fund's anticipated deficit. Since this proposed transfer has been ratified by the Legislature, BAR will have to rely on the estimated \$22.5 million in annual revenue to fund the continued operation of the CAP at some reduced level.

In order to help the CAP continue to operate at the highest level possible under the previously unanticipated fiscal circumstances, it will be necessary to reduce the amount of assistance that is provided to consumers in vehicle retirement. In order to advance that purpose, this action will provide the flexibility to reduce the maximum amount payable for retirement of a vehicle from one thousand dollars (\$1,000) to an appropriate amount based on the availability of resources and the projected volume of retired vehicles. This could save approximately \$6.7 million in the remainder of the current fiscal year and \$13.5 million in the budget year. In addition, BAR will pursue loans from other funds, such as the Vehicle Inspection and Repair Fund (VIRF) to make up any additional shortfall in the current fiscal year.

In addition to providing assistance to low income consumers, the CAP is responsible for significant emissions reductions and contributes directly to the overall effectiveness of the Smog Check Program. For example, in fiscal year 2000/2001, a total of 19,242 high polluting vehicles were retired resulting in emissions reductions of approximately 18 tons per day (tpd); another 11,762 vehicles were repaired resulting in emissions reductions of approximately 4 tpd. In the first half of the current fiscal year 10,523 vehicles have been retired and 9,477 vehicles have been repaired for emissions reductions of approximately 10 tpd and 4 tpd respectively.

Any reduction in the level of operation of the CAP will not only impact important services to consumers, but will negatively affect the improvements in emissions reductions necessary to comply with the federal Clean Air Act. The additional emissions

reductions anticipated from the Program improvements committed to by the ARB and the BAR will be negated by any cutbacks in the operation of the CAP. This action is necessary to enable the CAP to continue serving as many consumers as possible, and to generate the highest level of emissions reductions possible within the limits of available resources.

2. Deletion of Incorrect Cross-reference:

In order to be eligible for participation in the Consumer Assistance Program, a vehicle must be subject to Smog Check Program (Program). Health and Safety Code section 44011 specifies which vehicles are subject to the Program and which vehicles are exempt. Section 3340.5 of the California Code of Regulations exempts additional vehicles from the Program. Section 3394.4 of the California Code of Regulations references both Section 44011 (H & S Code) and Section 3340.5 (CCR) as determining which vehicles are required biennially to obtain a certificate of compliance. The reference to Section 3340.5 appears to be erroneous, as that section only provides *exemption* to certain vehicles.

The intent of the proposed action is to remove the erroneous reference to Section 3340.5. This action will have no regulatory effect.

3. Income-Eligible Repair Assistance Qualifications:

There are a number of benefit and/or public assistance programs that can be used to qualify for the Income Eligible Repair Assistance option of the CAP. One such program that is accepted by CAP is the California Work Opportunity and Responsibility to Kids (CalWORKs) program. CalWORKs is similar to or the equivalent of the federal government's Temporary Assistance for Needy Families (TANF) program. However, because this program is not specifically identified in regulation and is not mentioned in the CAP application itself, many potential applicants who would otherwise qualify because they are CalWORKs recipients, do not submit applications. It appears that they do not think they are eligible for this CAP option because CalWORKs is not specifically identified as a qualifying benefit program.

The intent of the proposed action is to inform potential applicants for the Income Eligible Repair Assistance option of as many qualifying benefit and/or public assistance programs as possible. This action will have no regulatory effect.

4. Consumer Assistance Program Application (CAP/APP 02/02):

CAP is a fairly new and dynamic program and the staff is continually striving to improve and streamline processes. One focus of these efforts is the application form. The clearer and more consistent the application

is, the easier it is for applicants to complete it properly. In addition to changes in the application that conform to the above-described proposed actions, other technical, grammatical and editorial changes are being proposed to clarify and simplify the application.

The intent of this proposed action is: (1) to make the CAP/APP as clear and self-explanatory as possible; (2) to revise the Income Eligibility Table based on the 2002 Federal Poverty Guidelines published February 14, 2002 by the Department of Health and Human Services (*Federal Register* Vol. 67, No. 31, Feb. 14, 2002, pp. 6931-6933); and, (3) to incorporate by reference the current revision of the application form (CAP/APP (01/02)). This action will have no regulatory effect.

SUMMARY OF EXISTING LAWS AND REGULATIONS

Section 9882 of the Business and Professions Code provides that the Director of the Department of Consumer Affairs may adopt and enforce those rules and regulations that he or she determines are reasonably necessary to carry out the purposes of the Automotive Repair Act. Section 44002 of the Health and Safety Code designates the department as having the sole and exclusive authority for developing and implementing the motor vehicle inspection program known as the Smog Check Program. Sections 44062.1 and 44090, et seq., of the Health and Safety Code provide the basic foundation and framework for the Consumer Assistance Program.

Section 3394.3 of Title 16 of the California Code of Regulations establishes the assistance limits for eligible applicants to the CAP at up to one thousand dollars (\$1,000) for vehicle retirement and up to five hundred dollars (\$500) for emissions-related repair assistance.

Section 3394.4 of Title 16 of the California Code of Regulations provides, in pertinent part, that in order to qualify for participation in the Consumer Assistance Program, a vehicle must be required biennially to obtain a certificate of compliance pursuant to Section 44011 of the Health and Safety Code and Section 3340.5 of the California Code of Regulations.

Section 3394.6 of the California Code of Regulations, in pertinent part, provides that an applicant for participation in the Consumer Assistance Program must submit a completed application, and incorporates that application form by reference. This regulation also specifies that an applicant applying for the Repair Assistance option based on income level, must show proof of household income by providing a copy of a letter from the issuing agency stating that the applicant receives any one of certain specified benefits. CAP income eligibility is set at 185% of the applicable Federal Poverty Guideline.

EFFECTS OF REGULATORY ACTION

1. Consumer Assistance Program (CAP) Repair Assistance and Vehicle Retirement Options; Deletion of Incorrect Cross-reference:

The proposed action amends subsection (b)(1) of Section 3394.4 by deleting the erroneous cross-reference to Section 3340.5, which enumerates vehicles that are *exempt* from biennial inspection and certification. Section 3394.4 should reference only those sections that identify vehicles that are required to be inspected and certified.

2. Income-Eligible Repair Assistance Qualifications:

The proposed action amends subsection (b)(2)(A) of Section 3394.6 to include the California Work Opportunity and Responsibility to Kids (CalWORKs) program as a qualifying form of benefit in order to receive repair assistance.

3. Consumer Assistance Program Application (CAP/APP 02/02):

The proposed action amends subsection (a) of Section 3394.6 to change the revision date of the incorporated Consumer Assistance Program application form (CAP/APP) from (04/01) to the current version of (02/02).

The proposed action also includes various technical, grammatical and conforming revisions to the CAP/APP, as follows:

1) Cover Page (1 of 6):

- a) The introductory paragraphs are amended, for clarification, to read as follows:

"The Department of Consumer Affairs provides financial assistance to consumers whose vehicles need Smog Check repairs.

"The Consumer Assistance Program (CAP) helps bring vehicles into compliance with California emissions standards. CAP not only helps consumers, but also helps clean California's air.

"Look inside for more details."

- b) The telephone at the bottom left of the page, "Consumer Hotline: 1-800-952-5210," is deleted as it is confusing and unnecessary.

2) Page 2 of 6:

- a) In the Income Eligibility Table, the maximum gross household income amounts have been recalculated based on the 2002 Federal Poverty Guidelines published February 14, 2002 by the Department of Health and Human Services (*Federal Register* Vol. 67, No. 31, Feb. 14, 2002, pp. 6931-6933).
- b) The phrase "CAP-approved station" is added, at the end of the last sentence in the second paragraph of item (1), for clarification.

- c) The reference, in item (2), Vehicle Retirement, to the amount the state will pay is changed from \$1,000 to "between \$500 and \$1,000" for clarification and consistency, and the following explanation is added:

"The amount payable for your vehicle will be determined after your application has been processed and approved. The amount payable will be calculated based on available funding."

- d) Following item 2, in the first bullet of the list of qualifications for Repair Assistance or Vehicle Retirement, the parenthetical phrase "(Aborted, manual mode and training mode tests do not qualify.)" is added for clarification.
- e) In the third bullet of the list of additional qualifications for Vehicle Retirement, the confusing and contradictory statements regarding exceptions to the current registration requirement are deleted for clarification.
- f) Item number (3), Repair Cost Waiver, is deleted as it is unnecessary. Applicants are informed of the repair cost waiver program if it is determined that they are not eligible for the options of the Consumer Assistance Program.

3) Page 3 of 6:

- a) In item 1, the last sentence is reworded to read: *"Only repairs performed at a CAP-approved station are eligible for the Consumer Assistance Program."* This change is made for emphasis and clarity.
- b) In item 3, the second bulleted item is deleted, as it is unnecessary and no longer required.
- c) In the list of qualifying benefits under the fourth main bullet of item 3, the benefit type "California Work Opportunity and Responsibility to Kids (CalWORKs)" is added after "State Supplemental Payments (SSP)" for clarification and to conform to the regulation change.

4) Page 4 of 6:

- a) Under Repair Assistance: "Test-Only Eligible" Applicants, in item 1, the last sentence is reworded to read: *"Only repairs performed at a CAP-approved station are eligible for the Consumer Assistance Program."* This change is made for emphasis and clarity.
- b) In item 3, the second bulleted item is deleted, as it is unnecessary and no longer required.
- c) Under Vehicle Retirement Applicants, in item 1, a second sentence is added to read: *"Do not have your vehicle retired until your application has been approved."* This change is made for clarity and consistency.

- d) Also in item 1, the last sentence is reworded to read: "***Only*** vehicles retired at a CAP-approved dismantler are eligible for the Consumer Assistance Program." This change is made for emphasis and clarity.
 - e) In item 3, the phrase "*and required documents*" is deleted, as it is redundant.
 - f) Also in item 3, the word documents is changed to the singular, "document," and the second bulleted item is deleted as it is unnecessary and no longer required.
 - g) In item 4, the sentence, "You will receive a phone call and additional information about how to retire your vehicle." is changed to, "You will receive an eligibility letter informing you of the amount payable for your vehicle and instructions about how to retire it." This change reflects the current practice.
 - h) At the bottom of the page, the "800" telephone number is changed to a new public "800" number (1-866-272-9642) for the Consumer Assistance Program.
- 5) Page 5 of 6:
- a) In the heading of Section 2a, the parenthetical phrases "(if applicable)" and "(Vehicle Retirement Only)" are deleted for clarification and because they are unnecessary.
 - b) In Step 1 of Section 5, the income category "CalWORKs Payments" is added after "Social Security Payments" for clarification and to conform to the regulation change.
 - c) At the bottom of the page, the form revision date is changed from "(04/01)" to "(02/02)."
- 6) Page 6 of 6:
- a) At the bottom of the page, below "Joint Owner's Signature," the parenthetical phrase "(Vehicle Retirement Only)" is deleted for clarification and because it is unnecessary.

FISCAL IMPACT STATEMENTS

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Costs to Any Local Agency or School district for Which Government code Section 17561 Requires Reimbursement: None.

BUSINESSES IMPACT

The Bureau has made an initial determination that the proposed regulatory action would have no

significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None.

IMPACT ON JOBS/NEW BUSINESSES

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Bureau is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau at 10240 Systems Parkway, Sacramento, California 95827.

AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS

All the information upon which the proposed regulations are based is contained in the rulemaking

file that is available for public inspection by contacting the Bureau of Automotive Repair at the address mentioned above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

James Allen, Regulations Analyst
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-4300
Fax No.: (916) 255-1369
E-mail: jim_allen@dca.ca.gov

The backup contact person is:

Debbie Romani, Staff Services Manager
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-4300
Fax No.: (916) 255-1369
E-mail: debbie_romani@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Michael Lafferty, who may be contacted at (916) 255-0719.

WEBSITE ACCESS

Materials regarding this proposal can also be found on the Bureau's website at www.smogcheck.ca.gov.

TITLE 28. DEPARTMENT OF MANAGED HEALTH CARE

NOTICE OF ADOPTION OF EMERGENCY REGULATION REGARDING ACTS OF WAR EXCLUSIONS

NOTICE IS HEREBY GIVEN

The Director of the Department of Managed Health Care (Director), pursuant to the rulemaking authority granted by sections 1344 and 1346 of the Health and Safety Code, proposes to implement, interpret and make specific sections 1345 and 1367 of the Health and Safety Code by adopting section 1300.67.05 in Title 28, California Code of Regulations (CCR) relating to Acts of War Exclusions. This regulation was adopted as an emergency and became effective on February 14, 2002, for 120 days. The regulation is now in the Certificate of Compliance period.

PUBLIC HEARING

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Managed Health Care (Department) contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD/ CONTACT PERSON

Notice is also given that any interested person may present statements or arguments relevant to the proposed action by a written communication addressed to, and received by, the Department's contact person identified below on or before 5 p.m. on April 22, 2002. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

Written communications may also be sent to Lyn Amor Macaraeg via electronic mail at lmacaraeg@dmhc.ca.gov or via facsimile at (916) 324-6459. Comments should be received by no later than 5 p.m. on the last day of the comment period, April 22, 2002. All comments, including facsimile and e-mail transmissions, should include the author's name and mailing address, to enable the Department to provide future notices of proposed changes to the regulatory text.

CONTACTS

Inquiries concerning the action described in this notice and substantive questions may be directed to Curtis Leavitt, Assistant Chief Counsel, at (916) 322-7550. The designated backup person is Ms. Lyn Amor Macaraeg, Regulations Coordinator, at (916) 322-7550.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Health and Safety Code section 1345(b) defines the scope of basic health care services. These services include emergency, preventative, physician and hospital inpatient services.

Health and Safety Code section 1367(i) mandates that each health care service plan contract shall provide to subscribers and enrollees all of the basic health care services included in Health and Safety Code section 1345(b).

Health and Safety Code section 1367(h)(1) states that all contracts with subscribers and enrollees shall be fair, reasonable, and consistent with the objectives of the Knox-Keene Act.

The Director of the Department is aware that many health care service plan contracts contain exclusions on basic health care coverage, when the coverage is

predicated upon an Act of War. This type of an exclusion of basic health care service is in violation of the Knox-Keene Act. Based upon the events of September 11, 2001, it is necessary that an emergency regulation be promulgated clarifying that basic health care services provided by health plans include those services necessitated by acts of war.

AUTHORITY

California Health & Safety Code sections 1344, 1346 and 1367.

REFERENCE

California Health & Safety Code sections 1345 and 1367.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE

The Department has prepared and has available for public review the following documents:

1. An initial statement of reasons for the new regulation;
2. Text of the legally effective regulation; and,
3. All information upon which this proposal is based (rulemaking file).

A copy of any or all of these items is available upon request by writing to the Department of Managed Health Care, ATTN: Ms. Lyn Amor Macaraeg, 980 9th Street, Suite 500, Sacramento, California 95814. This address will also be the location of public records, including reports, documentation, and other material related to this notice of proposed action. Additionally, a copy of the final statement of reasons (when prepared) will be available upon request by writing to the same address.

INTERNET AVAILABILITY

Materials regarding this notice of proposed action that are available via the Internet may be accessed at the following website:

<http://www.dmhca.ca.gov/library/regulations/pending>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation. The changes will be clearly indicated. A request for a copy of any modified regulation should be addressed to the contact person designated below. The Director will accept written comments on the modified regulation for 15 days after the date on which they are made available. The Director may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

ALTERNATIVES CONSIDERED

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternatives considered by the agency or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the above action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the comment period.

FISCAL IMPACT

- Cost to any state agency: None.
- Cost to any local agency or school district for which Cal. Gov't Code section 17500-17630 requires reimbursement: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Costs or savings in federal funding to the state: None.
- Effect on housing costs: None.

DETERMINATIONS

The Director has determined that the proposed regulatory action:

- Has no economic impact on small businesses. Health care service plans are not a small business under Cal. Gov't Code section 11342.610.
- Does not imposed a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Cal. Gov't Code section 17500 et seq.
- Pursuant to Cal. Gov't Code 11346.5(a)(8), the Director has made an initial determination that this regulation will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The Department is not aware of any cost imposed that a representative, private person, or business would necessarily incur in reasonable compliance with the proposed action.
- No known reasonable alternative to this proposed regulation exists;
- Per Cal. Gov't Code section 11346.5(a)(10), does not significantly affect:
 - The creation of jobs in California;
 - The elimination of jobs in California;
 - The creation of new businesses in California;

- The elimination of existing business in California;
- The expansion of existing businesses in California.

CONTACT PERSON

Comments or inquiries concerning this proposed regulation and substantive questions may be directed to CURTIS LEAVITT, Assistant Chief Counsel, at (916) 322-7550 or to the backup comment person, LYN AMOR MACARAEG, Regulations Coordinator, at (916) 322-7550. Department of Managed Health Care, Office of Legal Services, 980 Ninth Street, Suite 500, Sacramento, California 95814.

GENERAL PUBLIC INTEREST

FISH AND GAME COMMISSION

Notice of Proposed Changes in Regulations of the Fish and Game Commission

(Continuation of California Regulatory Notice Register 2002, No. 7-Z,
and Commission Meeting of February 9, 2002)

(NOTE: The Commission is exercising its powers under Section 202 of the Fish and Game Code as the following changes to the proposed regulations may not be available to the public for the full public comment period prior to adoption. See the text of this notice.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission, pursuant to the authority vested by sections 200, 202, 203, 203.1, 331, 332, 1050, 1572, 3452, 3453, 4005, 4009.5, 4751, 4902 and 10502 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 203, 203.1, 207, 331, 332, 460, 713, 1050, 1570–1572, 1801, 3452, 3453, 3800, 3950, 3951, 4005, 4009.5, 4330–4333, 4336, 4751, 4756, 4800–4805, 4902, 10500 and 10502 of said Code, has open to public review its regulations in Division 1, Title 14, California Code of Regulations, Part 2, Chapter 1, General Provisions and Definitions; Chapter 2, Resident Small Game; Chapter 3, Big Game; Chapter 4, Depredation; Chapter 5, Furbearing Mammals; and Chapter 6, Nongame Animals.

Pursuant to the provisions of sections 203 and 203.1 of the Fish and Game Code, the Fish and Game Commission will consider populations, habitat, food supplies, the welfare of individual animals, and other pertinent facts and testimony in adopting season, bag and possession limits, and areas of take, and prescribe

the manner and means of taking as part of the 2002–2003 Mammal Hunting and Trapping Regulations.

At the Fish and Game Commission's meeting on February 9, 2002, the Department of Fish and Game made the following recommendations for changes relative to game mammal, furbearer and nongame mammal regulations for the 2002–2003 seasons: proposes to amend sections 265, 308, 360, 361, 362, 363, 364, 365, 367, 368, 401, 460, 472, 474, 555, 601 and 711, repeal sections 370, 371, 372 and 373, and add sections 477 and 708, Title 14, California Code of Regulations, to make tag quota changes, clarifications, and urgency changes for the 2002–2003 Mammal Hunting and Trapping Regulations.

Proposed changes to sections as set forth in Notice Register 2002, No. 7-Z, remain the same, except for Sections 364 and 708. The New Informative Digests for Sections 364 and 708 have been added as follows.

NEW INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Section 364, Elk.

Existing regulations provide elk license tag quotas for each hunt. The proposal changes license tag quotas for specific hunts and will: Increase the Shasta quota from one bull and four antlerless tags to five either-sex archery only tags and 10 either-sex general season tags; increase the Marble Mountains quota from 30 either-sex tags to 40 either-sex tags; change the Big Lagoon quota from 25 either-sex tags to 12 bull tags and 13 antlerless tags; change the Klamath quota from 30 either-sex tags to 15 bull tags and 15 antlerless tags; provide five either-sex archery only tags valid for established zones in the Owens Valley; and reduce the total bull tag quota for the Tinemaha zone from 10 to 6.

Existing regulations specify boundaries for the Shasta Rocky Mountain Elk Hunt. The proposed change significantly expands the current hunt zone from Shasta County to include portions of Modoc, Lassen and eastern Siskiyou counties, so that additional recreational opportunities can be provided consistent with the expansion of elk populations in and near the current hunt area. The hunt is renamed the Northeastern California Rocky Mountain Elk Hunt to reflect the major expansion of hunt zone boundaries.

Existing regulations specify the boundary for the Marble Mountains Roosevelt Elk Hunt, which occurs within a portion of western Siskiyou County. The proposed change expands the boundary for this hunt to include portions of Humboldt, Trinity and Shasta counties so that additional recreational opportunities can be provided consistent with the expansion of elk populations in and near the current hunt area.

Existing regulations specify the boundary for the Big Lagoon Roosevelt Elk Hunt. The proposed change expands the boundary of the Big Lagoon Roosevelt Elk Hunt within Humboldt County. A major private landowner within the hunt boundary (Simpson Timber Company) has requested that this boundary be expanded to allow hunters additional opportunity to hunt elk on their land.

Existing regulations specify boundaries and season dates for elk hunts within the Owens Valley, but do not provide an exclusive opportunity for archers to hunt elk. The proposed change establishes a nine day, archery only hunt period for existing zones in the Owens Valley beginning on the second Saturday in August. Under the proposed change, archery only tags are not valid during any other period, and no other tags are valid during the archery only period for the Owens Valley.

Existing regulations specify elk tag application and distribution procedures, including qualifying conditions and drawing details. The proposed change establishes new Subsection 708(d) and removes specific tag application and distribution procedures and tagging and reporting requirements from existing regulations by placing them in that new Subsection.

Existing regulations require a \$6.50 nonrefundable application fee and an \$277.50 resident license tag fee for hunting elk. The proposed change increases the application fee to \$6.75 (for a single application; \$13.50 for a two-party application) and the resident license tag fee to \$286.75, to reflect the cost of living increase as specified in Section 713 of the Fish and Game Code.

Editorial changes are also proposed to improve the clarity and consistency of the regulations. Reference to trespassing is deleted from this Section to reduce redundancy, since trespassing already is prohibited by Fish and Game Code sections 2016 and 2017.

Based on public input, the initial proposal has been modified so that successful applicants for the 2001 Fort Hunter Liggett Tule Elk Hunt, who were denied an opportunity to hunt when the hunt was cancelled, can be issued tags for this hunt in 2002. Quotas for this hunt remain unchanged from their 2001 levels and a sufficient list of 2001 alternates is available to ensure that the 2002 hunt is fully subscribed. This change will essentially remove Fort Hunter Liggett Tule Elk tags from the public drawing for 2002.

Section 708, Big Game License Tag, Application, Distribution and Reporting Procedures.

The proposed change establishes a new Section 708, by moving the tag application and distribution procedures for all big game into that new section. This change will facilitate future changes to the tag

application and distribution procedures that may be recommended as a result of implementing the automated license data system (ALDS).

Existing regulations provide for the distribution of remaining C and D Zone, and additional hunt tags with a second deer tag application on the first business day after September 1 within the old Section 371 (now incorporated into the new Section 708(a)). The original intent of this deadline was to provide ample opportunity for unsuccessful draw applicants to acquire tags. However, many C and D zone archery seasons occur prior to the availability of these tags, unnecessarily restricting opportunity for archery hunters. The proposed change would move this date to the first business day following August 1, allowing ample time to acquire tags by unsuccessful draw applicants, and for the distribution of tags prior to the start of archery seasons in those C and D zones.

Existing regulations do not specifically address Fish and Game Code Sections that pertain to requirements for: tagging (FGC 4336); tag validation/countersigning and transportation for the purpose of, (FGC 4341); deer head retention and production upon demand (FGC 4302); and deer violations and tag forfeiture (FGC 4340). These laws are not readily available to the general public, specifically hunters. In an effort to provide better public service, by making these laws readily available to hunters, the proposal incorporates all, or portions of these code sections into regulation.

Additionally, the existing regulations do not specify any means of providing a preference system for applicants that are unsuccessful in the drawing for premium deer tags, bighorn sheep tags, pronghorn antelope tags or elk tags. The amended proposal specifies that these unsuccessful hunters will be awarded a point that will be for future tag drawings employing a preference system.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the City Council Chambers, 333 W. Ocean Boulevard, Long Beach, on April 5, 2002, at 10:00 a.m., or as soon thereafter as the matter may be heard. Written comments may be submitted at the address given below, but must be received no later than April 5, 2002 at the hearing in Long Beach. Adoption of the new regulations will be by teleconference call meeting on April 25, 2002, in Sacramento. The public may attend this meeting to be held at 10:00 a.m. in the Resources Building, 1416 Ninth Street, Conference Room #1320. The Commission will certify the final environmental documents associated with the proposed regulatory action and consider adoption of the 2002 and 2003 Mammal Hunting and Trapping Regulations. The regulations as proposed in strikeout-underline format,

as well as a statement of purpose, including environmental considerations and all information upon which the proposal is based, are on file and available for public review from John Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John Duffy at the preceding phone number. Copies of the statement of purpose, including the regulatory language, may be obtained from the above address.

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

ECONOMIC IMPACT

The Commission has assessed the potential for significant adverse economic impact on business or private persons that might result from the proposed regulatory action and it has made the following determinations relative to the required statutory categories:

- (a) Significant Adverse Economic Impact on Businesses, including the Ability of California Businesses to Compete with Businesses in Other States: None.

Section 364—The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Given the number of tags available to the public, this proposed change is minor in scope and economically neutral.

Section 708—The agency is not aware of any cost impacts that a representative business would necessarily incur in reasonable compliance with the proposed action.

- (b) Impact the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Economic Impact on Private Persons: None.
- (d) Costs or Savings to State agencies or Costs/Savings in Federal funding to the State: None.
- (e) Involve Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Mandate Programs on Local Agencies or School Districts: None.
- (g) Impose Costs to any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Affect Housing Costs: None.

PLAIN ENGLISH POLICY STATEMENT

It has been determined that the adoption/amendment of these regulations will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR.

CONSIDERATION OF ALTERNATIVES

In order to take this action, the agency must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

CALIFORNIA REGULATORY REGISTER NOTICE ACTION DESCRIPTION FOR A SMALL LOAD HAZARDOUS WASTE TRANSPORTATION VARIANCE ISSUED BY THE STATEWIDE COMPLIANCE DIVISION, TRANSPORTATION SECTION, FOR ANTIFREEZE DELIVERY SYSTEMS

On January 22, 2002, the Department of Toxic Substances Control (DTSC) granted a regulatory exemption variance to Antifreeze Delivery Systems, a registered transporter of hazardous waste, to conduct small load transporter operations authorized under the California Code of Regulations, title 22, section 66263.46. The variance permits the grantee to transport automotive antifreeze waste in amounts no greater than 100 kilograms per load and no greater than 1,000 kilograms per calendar month. In lieu of a manifest, the transporter shall use a shipping paper

which contains all the information required pursuant to the Code of Federal Regulations, title 49, part 172, subpart C, and the California Code of Regulations, title 22, section 66263.46(f). The hazardous waste shall be transported to authorized facilities only.

CEQA Exemption. The project qualifies for a CEQA exemption under the Public Resources Code section 21080(b)(1), Ministerial Projects. This variance is issued pursuant to the California Code of Regulations, title 22, chapter 13, article 4, section 66263.40 et seq. (Regulatory Exemptions for Certain Transportation Operations), that allows for five specific types of transportation requirement exemptions. Applicants must meet preset regulatory standards. In applying these standards, DTSC only verifies specific facts regarding eligibility and may not add case-specific conditions.

This variance expires on January 22, 2004. For more information please call Maria Salomon of DTSC's Transportation Section at (916) 255-3624.

**CALIFORNIA REGULATORY REGISTER
NOTICE ACTION DESCRIPTION FOR A
SMALL LOAD HAZARDOUS WASTE
TRANSPORTATION VARIANCE ISSUED BY
THE STATEWIDE COMPLIANCE DIVISION,
TRANSPORTATION SECTION, FOR
PRECIOUS METAL CONSULTANTS, INC.**

On January 29, 2002, the Department of Toxic Substances Control (DTSC), granted a regulatory exemption variance to Precious Metal Consultants, Inc., a registered transporter of hazardous waste, to conduct small load transporter operations authorized under the California Code of Regulations, title 22, section 66263.46. The variance permits the grantee to transport silver waste in amounts no greater than 100 kilograms per load and no greater than 1,000 kilograms per calendar month. In lieu of a manifest, the transporter shall use a shipping paper which contains all the information required pursuant to the Code of Federal Regulations, title 49, part 172, subpart C, and the California Code of Regulations, title 22, section 66263.46(f). The hazardous waste shall be transported to authorized facilities only.

CEQA Exemption. The project qualifies for a CEQA exemption under Public Resources Code section 21080(b)(1), Ministerial Projects. This variance is issued pursuant to California Code of Regulations, title 22, chapter 13, article 4, section 66263.40 et seq., (Regulatory Exemptions for Certain Transportation Operations), that allows for five specific types of transportation requirement exemptions. Applicants must meet preset regulatory standards. In applying these standards, DTSC only verifies specific facts regarding eligibility and may not add case-specific conditions.

The variance expires on January 29, 2004. For more information please call Maria Salomon of DTSC's Transportation Section at (916) 255-3624.

**HOUSEHOLD HAZARDOUS WASTE UNIT
STATE REGULATORY PROGRAMS DIVISION
PUBLIC NOTICE FOR VARIANCE ISSUANCE**

On January 9, 2002, the State Regulatory Programs Division of the Department of Toxic Substances Control (DTSC) issued a conditionally exempt small quantity generator (CESQG) transportation and manifesting variance renewal to the City of Thousand Oaks. Authority for this action is contained in Health and Safety Code section 25143. The variance authorizes the City of Thousand Oaks household hazardous waste collection facilities to accept, and qualified small businesses to transport, up to 100 kilograms (220 pounds/27 gallons) of hazardous waste at one time per month without meeting registered transporter or hazardous waste manifest requirements. Specific standards exempted are contained in Health and Safety Code sections 25163(a) and 25160 respectively. Transported waste is shipped in accordance with federal Department of Transportation, California Highway Patrol, and California Vehicle Code requirements. For additional information contact Lee Halverson of at the Department of Toxic Substances Control, Household Hazardous Waste Unit at (510) 540-3894.

**HOUSEHOLD HAZARDOUS WASTE UNIT
STATE REGULATORY PROGRAMS DIVISION
PUBLIC NOTICE FOR VARIANCE ISSUANCE**

On January 9, 2002, the State Regulatory Programs Division of the Department of Toxic Substances Control (DTSC) issued a three-year conditionally exempt small quantity generator (CESQG) transportation and manifesting variance to West Contra Costa Integrated Waste Management Authority's household hazardous waste collection program. Authority for this action is contained in Health and Safety Code (HSC), section 25143. The variance authorizes West Contra Costa Integrated Waste Management Authority's household hazardous waste collection facilities to accept, and qualified small businesses to transport, up to 100 kilograms (220 pounds/27 gallons) of hazardous waste at one time per month without meeting registered transporter or hazardous waste manifest requirements. Standards exempted are contained in HSC, sections 25163, subdivision (a) and 25160 respectively. Transported waste is shipped in accordance with federal Department of Transportation, California Highway Patrol, and California Vehicle Code requirements. For additional information contact Lee Halverson at the Department of Toxic Substances Control, Household Hazardous Waste Unit at (510) 540-3894.

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL
HEALTH HAZARD**

**Notice to Interested Parties
March 8, 2002**

**ANNOUNCEMENT OF PUBLIC WORKSHOP
AND PUBLIC COMMENT PERIOD**

**Public Workshop
Discussion of the
Draft Technical Support Document
for a Proposed Public Health Goal for
PERCHLORATE in Drinking Water**

The Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency announces the availability of the Draft Technical Support Document for a Proposed Public Health Goal (PHG) for Perchlorate in Drinking Water. This first publicly-released draft of the document will be posted on the OEHHA Web site (www.oehha.ca.gov) on March 11, 2002. In addition, a one-day public workshop will be held on April 29, 2002, at the Elihu Harris Building, 1515 Clay Street, Oakland, California to discuss the scientific basis and recommendations in the draft document. A summary of the scientific peer review comments received so far will be available at the workshop or upon request. The workshop will begin at 10:30 a.m. and will last until all business for the day is concluded or 4:30 p.m. OEHHA follows the requirements set forth in Health and Safety Code, Sections 57003(a) and 116365, for the workshop and public input.

The workshop is planned to encourage a dialogue between OEHHA scientists and the public, to discuss the PHG recommendations and to receive comments. Following the workshop, OEHHA will revise the document as appropriate, and make it available for a 30-day public review and scientific comment period. This second review and comment period will be announced and published in the California Regulatory Notice Register and posted on the OEHHA Web site. The responses to the major comments from the public at the workshop and during the two public review and scientific comment periods, as well as from peer reviewers at the University of California system and state and federal agencies, will also be available on the OEHHA Web site.

Oral and written comments received at the workshop will be considered during the revision of the draft technical support document. Written comments must be received at OEHHA by 5:00 p.m. April 29, 2002, to be considered during this first revision of the document.

The PHG technical support documents provide information on the health effects of contaminants in drinking water. The PHG is a level of drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The California Safe Drinking Water Act of 1996 (Health and Safety Code Section 116365), amended 1999, requires OEHHA to develop PHGs based exclusively on public health considerations. PHGs published by OEHHA will be considered by the California Department of Health Services in setting drinking water standards (Maximum Contaminant Levels, or MCLs).

Printed copies of the draft technical support document may be obtained for a fee from:

Instant Copying and Laser Printing
2015 Shattuck Avenue
Berkeley, California 94720
Phone: (510) 704-9700
FAX: (510) 704-9970

If you would like to receive further information on this announcement or have questions, please contact our office at (510) 622-3170 or the address below. Written requests or comments should be addressed to:

Dr. Yi Wang
Pesticide and Environmental Toxicology Section
Office of Environmental Health Hazard Assessment
California Environmental Protection Agency
1515 Clay Street, 16th Floor
Oakland, California 94612
Attention: PHG Project
FAX: (510) 622-3218

PROPOSITION 65

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65)**

**NOTICE TO INTERESTED PARTIES
March 8, 2002**

**PUBLIC WORKSHOP
SOLICITATION OF INPUT ON
THE SECOND SET OF PROPOSED
CLARIFYING REGULATIONS**

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of

1986 (Proposition 65 or the Act). As the lead agency, OEHHA is authorized to adopt and modify regulations as necessary to conform with and implement the provisions of the Act (Health and Safety Code Section 25249.12.)

On November 2, 2001, OEHHA convened a public workshop to solicit input on a proposal for the first in a series of clarifying regulatory amendments. In an effort to continue the orderly process of considering amendments to the Proposition 65 regulations, OEHHA announces the next proposed regulatory amendments to Section 12104 (Safe Use Determination,) Title 22 of the California Code of Regulations. This notice announces the availability of the second draft regulatory amendment package OEHHA proposes to put forward in advance of the formal rulemaking process specified in the Administrative Procedure Act. The draft regulatory package is available from the Proposition 65 Implementation Office at the address and telephone number indicated below or from the Internet from the following address: <http://www.oehha.ca.gov>.

The public workshop will be held on **Monday, March 18, 2002**, following the public hearing OEHHA has scheduled to receive testimony on the first set of clarifying regulatory amendments which will begin at 10:00 a.m. at 1001 I Street in Sacramento, in the Coastal Hearing Room on the Second Floor. Although the notice announcing the public hearing for the first set of clarifying regulatory amendments originally stated that the hearing would last until all business has been conducted, or until 5:00 p.m., oral testimony will be heard until 12:30 p.m. and written statements will be accepted until 5:00 p.m., Monday, March 18, 2002. The public workshop to provide input on the draft second set of clarifying regulatory amendments will begin at 2:00 p.m. at the same location. The public workshop will last until all business has been conducted, or until 5:00 p.m.

Anyone wishing to comment on the draft regulatory amendments may do so orally at the public workshop or in writing by submitting written comments in triplicate by mail, fax, or hand-delivery to:

Ms. Cynthia Oshita
Office of Environmental Health Hazard Assessment
Street address: 1001 I Street
Sacramento, California 95814
Mailing address: P.O. Box 4010
Sacramento, California 95812-4010
Fax No.: (916) 323-8803
Telephone: (916) 445-6900

In order to be considered, written submissions must be postmarked (if sent by mail) or received at

OEHHA (if hand-delivered or sent by fax) by 5:00 p.m. on Monday, March 18, 2002.

DECISION NOT TO PROCEED

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF DECISION NOT TO PROCEED

PURSUANT TO GOVERNMENT CODE 11347, NOTICE IS HEREBY GIVEN that the Fish and Game Commission, at the request of the Department of Fish and Game, decided not to proceed with the amendment of sections 460, 472, and 474; and to add section 477, Title 14, California Code of Regulations, regarding a part of Mammal Hunting and Trapping Regulations for 2002 and 2003, Notice File Number Z02-0205-07, which was published February 15, 2002 in California Notice Register 2002, No. 7-Z, pages 376-389.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF DECISION NOT TO PROCEED

Pursuant to Government Code Section 11347, the Occupational Safety and Health Standards Board of the State of California decided not to proceed with Title 8, Construction Safety Orders, Chapter 4, Subchapter 4, Article 29, Section 1718, Riding on Loads, and General Industry Safety Orders, Subchapter 7, Article 98, Section 4995, Riding Loads on Derricks, Hoists, or Cranes, (Notice File No. Z-01-0910-02, published September 28, 2001, in the California Notice Register 2001, No. 39-Z, page 1618), based on comments received and therefore, withdraws this proposed action for further consideration.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF DECISION NOT TO PROCEED

Pursuant to Government Code Section 11347, the Occupational Safety and Health Standards Board of the State of California has decided not to proceed with a proposal to adopt Title 8 California Code of Regulations, Chapter 4, Subchapter 6.2, Permanent Amusement Ride Safety Orders, Sections 3195.1 through 3195.15 (Notice File No. Z-01-0312-03), published March 30, 2001, in the California Regulatory Notice Register 2001, No. 13-Z, page 403).

The Board will initiate at a later date, with notice as required by law, a new proposal to adopt regulations pertaining to the same or similar subject matter.

February 21, 2002

Original: Rita Saenz, Director

Cc: Anthony J. Velasquez

Cc: Robin Garvey, Regulations Analyst

DISAPPROVAL DECISIONS

DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

Printed below are the summaries of Office of Administrative Law disapproval decisions. Disapproval decisions are published in full in the California Code of Regulatory Decisions. You may request a copy of a decision by contacting Mike Ibold, Law Librarian at the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, California 95814-4339, (916) 323-8906—FAX (916) 323-6826. Please request by OAL file number.

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW

(Gov. Code, sec. 11349.3)

OAL File No. 01-1231-01 S

BARBARA ECKARD

Senior Staff Counsel

For: DAVID B. JUDSON

Deputy Director/Chief Counsel

In re:

DEPARTMENT OF SOCIAL SERVICES

**REGULATORY ACTION: Title 22 and Manual of
Policies and Procedures (MPP)**

ADOPT : 102416.1

**AMEND: 80001, 80019, 80019.1, 80066, 87001,
87019, 87019.1, 87101, 87219, 87219.1, 87566,
87801, 87819, 87819.1, 87866, 101152, 101170,
101170.1, 101217, 102352, 102370, 102370.1**

DECISION SUMMARY

The regulatory action deals with criminal record clearances, criminal record exemptions, personnel records and applicable definitions that apply to all community care facilities and to all child care centers. (California Department of Social Services File ORD#1200-26.) On February 14, 2002, the Office of Administrative Law ("OAL") notified the Department of Social Services ("Department") that the regulatory action was disapproved for failure to comply with the "clarity" and "necessity" standard(s) contained in Government Code section 11349.1.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

BOARD OF PSYCHOLOGY

Replace Oral Examination

The regulatory action is the Certificate of Compliance for the emergency regulatory action that deleted the oral examination for licensure and replaced it with the California Jurisprudence and Professional Ethics Examination and amended licensing fees. (Prior OAL File: 01-1214-02E.)

Title 16

California Code of Regulations

AMEND: 1388, 1388.6, 1389, 1392, 1397.63

REPEAL: 1388.5

Filed 02/20/02

Effective 02/20/02

Agency Contact: Kathy Bradbury (916) 263-0712

BUREAU OF AUTOMOTIVE REPAIR

Consumer Assistance Program (CAP)

This emergency rulemaking reduces the amount of assistance that is provided to consumers for vehicle retirement in order to continue to operate the Consumer Assistance Program (CAP) at the highest level possible which will assure compliance with the Federal Clean Air Act.

Title 16

California Code of Regulations

AMEND: 3394.4, 3394.6

Filed 02/26/02

Effective 02/26/02

Agency Contact: James Allen (916) 255-4300

DEPARTMENT OF CHILD SUPPORT SERVICES

Case Intake Process

This emergency readopt would require local child support agencies to make applications available to the public and to accept all applications for child support

services and referrals of public assistance recipients from the county welfare department. These regulations also specify requirements for establishing a case record and processing a case, and specify requirements related to screening for family violence and activating a family violence indicator.

Title 22

California Code of Regulations

ADOPT: 110041, 110098, 110284, 110299, 110428, 110430, 110473, 110539, 112002, 112015, 112025, 112034, 112035, 112100, 112110, 112130, 112140, 112150, 112152, 112154, 112155, 112200, 112210, 112300, 11230.1, 112302 AMEND: 110042, 110431, 110609

Filed 02/21/02

Effective 03/12/02

Agency Contact: Lucila Ledesma (916) 464-5087

DEPARTMENT OF CONSERVATION

SB528 Predatory Pricing

This emergency rulemaking action conforms the Department's regulation on unfair and predatory pricing by supermarket site recycling centers to statutory changes made by SB 528 (Chapter 874, Statutes 2001).

Title 14

California Code of Regulations

AMEND: 2135

Filed 02/22/02

Effective 02/22/02

Agency Contact: Karen Denz (916) 322-1899

DEPARTMENT OF FOOD AND AGRICULTURE

Conflict of Interest Code

The Department of Food and Agriculture is amending its conflict of interest code found at the captioned citation. The Fair Political Practices Commission approved these changes for filing on December 24, 2001.

Title 3

California Code of Regulations

AMEND: Div. 1, Chapter 1.1, Section 2 and Appendix

Filed 02/22/02

Effective 02/22/02

Agency Contact:

Michael P. Krug (916) 654-1393

DEPARTMENT OF FOOD AND AGRICULTURE

Red Imported Fire Ant Eradication Area

This regulatory action adds Sacramento County to the red imported fire ant eradication area. (Previous OAL file # 01-1012-04E)

Title 3

California Code of Regulations

AMEND: 3591.16(a)

Filed 02/20/02

Effective 03/22/02

Agency Contact:

Barbara J. Hass (916) 654-1017

DEPARTMENT OF INSURANCE

Low Cost Automobile Insurance Program

The filing makes nonsubstantive changes to the "California Automobile Insurance Low Cost Program Plan of Operations" which is incorporated by reference in section 2498.6. (Department of Insurance File Number RH01016791.)

Title 10

California Code of Regulations

AMEND: 2498.6

Filed 02/27/02

Effective 02/27/02

Agency Contact:

Mary Ann Shulman (415) 538-4133

DEPARTMENT OF INSURANCE

Actuarial Confidentiality and Conflict of Interest Regulation

This regulatory action establishes the standards for confidentiality and conflict of interest for independent actuaries retained by the Department to review and certify long-term care insurance rate filings.

Title 10

California Code of Regulations

ADOPT: 2581.1, 2581.2, 2581.3, 2581.4

Filed 02/26/02

Effective 03/28/02

Agency Contact: Caitlin Smith (415) 538-4411

DEPARTMENT OF JUSTICE

Nonprofit Raffle Regulations

The proposed regulatory action is the second emergency readoption of regulations establishing registration and reporting requirements for eligible organizations conducting non-profit raffles for beneficial or charitable purposes. This action implements Penal Code section 320.5. The regulations were initially adopted in OAL file number 01-0522-05E and readopted in OAL file number 01-1029-01EE.

Title 11

California Code of Regulations

ADOPT: 410, 411, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426

Filed 02/25/02

Effective 02/27/02

Agency Contact:

Barbara D. Moore (916) 323-6665

DEPARTMENT OF SOCIAL SERVICES

Noncitizen Eligibility Certification Provisions

The proposed action implements federal regulations known as the Noncitizen Eligibility and Certification Provisions. The changes include new vehicle valuation

rules that impact both the California Work Opportunity and Responsibility to Kids and the Food Stamp Programs; revising sponsored noncitizen programs, the addition of a 40 percent standard deduction from self-employment income for costs of producing that income; and extending certification periods and proration of benefits after a break in certification.

Title MPP

California Code of Regulations

AMEND: 63-102, 63-300, 63-301, 63-402, 63-405, 63-501, 63-502, 63-503, 63-504, 63-507

Filed 02/21/02

Effective 02/21/02

Agency Contact:

Anthony J. Velasquez (916) 657-2586

DEPARTMENT OF SOCIAL SERVICES

RCFE: Alzheimer's Disease, Specified Training Requirements

This Certificate of Compliance implements recent legislation requiring administrators for residential care facilities to complete at least eight hours of continuing education in subjects relating to serving residents with Alzheimer's Disease and other dementias.

Title 22, MPP

California Code of Regulations

AMEND: 87102, 87564.3, 87730

Filed 02/21/02

Effective 02/21/02

Agency Contact:

Anthony J. Velasquez (916) 657-2586

EMERGENCY MEDICAL SERVICES AUTHORITY
Revision of Form (EMSA-CRI (1/93)) to be Incorporated By Reference

The Emergency Medical Services Authority is removing the classification EMT-P (Paramedic) from the Form "Negative Certification Action Report" due to the fact that the EMT-P's disciplinary actions are solely governed by the State licensure process wherein the EMT-I and EMT-II are principally governed by the local EMSA Agency (Health and Safety Code sections 1797.194 and 1798.200). Changes to the subject form were based on intent language found in the Final Statement of Reasons for File No. 99-1221-08R, filed with the Secretary of State on 2-2-2000, operative 3-3-2000.

Title 22

California Code of Regulations

AMEND: 100209 (c)

Filed 02/20/02

Effective 02/20/02

Agency Contact: Sean Trask (916) 322-4336

INDUSTRIAL WELFARE COMMISSION

Wage Orders Effective January 1, 2001

These are various wage orders that have been approved by the Industrial Welfare Commission and submitted for filing with the Secretary of State and printing only.

Title 8

California Code of Regulations

ADOPT: 11010, 11020, 11030, 11040, 11050, 11060, 11070, 11080 REPEAL: 11010, 11020, 11020, 11040, 11050, 11060, 11070, 11080

Filed 02/22/02

Effective 01/01/01

Agency Contact: Traci Pilgrim (916) 322-4226

OFFICE OF ADMINISTRATIVE LAW

Procedures for Regulatory Determinations

The Office of Administrative Law is amending the captioned section by providing the current revision for the form entitled "Request for Determination-Form 1013" (Rev. 5/01).

Title 1

California Code of Regulations

AMEND: 121, Appendix A

Filed 02/22/02

Effective 02/22/02

Agency Contact: Melvin B. Fong (916) 324-7952

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN OCTOBER 24, 2001 TO
FEBRUARY 27, 2002**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

02/22/02 AMEND: 121, Appendix A

01/08/02 AMEND: 1402, 1414, 1437

Title 2

02/19/02 ADOPT: 18450.11

02/19/02 ADOPT: 18543 REPEAL: 18543

02/19/02 ADOPT: 18530.8

02/14/02 ADOPT: 18404.1 REPEAL: 18404.2

01/31/02 ADOPT: 18421.4

01/30/02 AMEND: 55300

01/24/02 ADOPT: 58500

01/24/02 ADOPT: 18450.3, 18450.4, 18450.5
AMEND: 18402

01/22/02 AMEND: 18706
 01/16/02 ADOPT: 18539, 18550
 01/16/02 AMEND: 18232, 18702.1, 18705.5, 18708
 12/27/01 AMEND: 18428
 12/26/01 AMEND: 2554(b)(4), 2555(a)(1)
 12/21/01 AMEND: 1859.2, 1859.81
 12/20/01 AMEND: 45100
 12/20/01 AMEND: 2300(b)
 12/18/01 AMEND: 2541(c), 2541(d)
 12/12/01 ADOPT: 1896.300, 1896.310, 1896.320, 1896.330, 1896.340, 1896.350, 1896.360, 1896.370
 11/27/01 ADOPT: 599.911, 599.912, 599.913
 11/26/01 ADOPT: 18540
 11/16/01 ADOPT: 18539.2
 11/06/01 ADOPT: 18536 REPEAL: 18536
 10/31/01 AMEND: 599.936
 10/31/01 AMEND: 599.911, 599.912, 599.913
 10/29/01 ADOPT: 18543
 10/29/01 ADOPT: 18542

Title 3

02/22/02 AMEND: 2 and Appendix
 02/20/02 AMEND: 3591.16(a)
 02/07/02 AMEND: 3591.12(a)
 02/04/02 AMEND: 1392.1, 1392.2, 1392.4, 1392.9.1
 02/04/02 AMEND: 3591.13(a)
 01/30/02 ADOPT: 2681, 2799 AMEND: 2675, 2676, 2694, 2695, 2697, 2701, 2734, 2773.1, 2773.5, 2774, 2774.5, 2775, 2778, 2782, 2783, 2783.5, 2788, 2789, 2790, 2790.5, 2793, 2794, 2796, 2798, 2801, 2802
 01/14/02 AMEND: 3423(b)
 01/14/02 AMEND: 3406(b)
 01/08/02 AMEND: 576.1
 01/04/02 AMEND: 3591.16(a)
 12/27/01 AMEND: 2
 12/26/01 ADOPT: 950, 951, 952, 953, 954, 955 AMEND: 900.1, 901, 927, 930, 931
 12/26/01 AMEND: 6650, 6654, 6656
 12/20/01 ADOPT: 7010
 12/14/01 AMEND: 3700(a),(b),(c)
 12/12/01 AMEND: 3591.2(a)
 12/05/01 ADOPT: 1301, 1301.1, 1301.2, 1301.3, 1301.4, 1301.5, 1301.6, 1301.7, 1301.8, 1301.9
 12/04/01 AMEND: 3591.12(a)
 11/28/01 AMEND: 3430(b)
 11/28/01 AMEND: 1359, 1392.4, 1436.30 REPEAL: 1359.1, 1360, 1361, 1362, 1363
 11/27/01 AMEND: 6252, 6256
 11/26/01 AMEND: 1380.19
 10/25/01 ADOPT: 480.9 AMEND: 300(c)(1)

10/24/01 ADOPT: 1301, 1301.1, 1301.2, 1301.3, 1301.4, 1301.5, 1301.6, 1301.7, 1301.8, 1301.9

Title 4

02/13/02 AMEND: 1691
 02/06/02 AMEND: 1858
 01/31/02 AMEND: 1467
 01/28/02 AMEND: 1844
 01/18/02 ADOPT: 2081
 01/11/02 ADOPT: 4160, 4161, 4162, 4263, 4164, 4165, 4166, 4167, 4168, 4169, 4170, 4171 REPEAL: 4160, 4161, 4162, 4164, 4167, 4168, 4169, 4170, 4171, 4172, 4173, 4174, 4175
 01/10/02 ADOPT: 2078
 01/07/02 ADOPT: 2082
 01/07/02 ADOPT: 2073
 01/07/02 ADOPT: 2072
 01/07/02 ADOPT: 2071
 01/07/02 ADOPT: 2076
 01/04/02 ADOPT: 2083
 01/03/02 ADOPT: 2074
 01/03/02 ADOPT: 2079
 01/03/02 ADOPT: 2070
 01/03/02 ADOPT: 2080
 01/03/02 ADOPT: 2077
 01/03/02 ADOPT: 2075
 12/12/01 REPEAL: 143.4
 12/11/01 AMEND: 1979
 12/10/01 AMEND: 1969
 11/29/01 ADOPT: 12130
 11/20/01 AMEND: 376, 377
 11/19/01 ADOPT: 10300, 10302, 10305, 10310, 10315, 10317, 10320, 10322, 10325, 10326, 10327, 10328, 10330, 10335, 10337 AMEND: 10317(c)
 11/19/01 ADOPT: 12100, 12102, 12104, 12106, 12108, 12110, 12120
 11/01/01 AMEND: 401, 403
 10/29/01 AMEND: 8070(e)

Title 5

02/19/02 ADOPT: 55753.5, 55753.7 AMEND: 55753
 01/24/02 AMEND: 11530, 11531
 01/24/02 AMEND: 43880, 43881, 43882, 43883, 43884
 01/08/02 AMEND: 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039
 01/08/02 REPEAL: 11820, 11822, 11823, 11827, 11828, 11829, 11831, 11832, 11833, 11834
 01/07/02 AMEND: 73000, 73010, 73100, 73110, 73120, 73130, 73140, 73150, 73160, 73165, 73170, 73180, 73190, 73200, 73210, 73230, 73240, 73260, 73270, 73280, 73290, 73300, 73310, 73320,

73330, 73340, 73350, 73360, 73380,
73390, 73400, 73410, 73420, 73430,
73440, et seq.
01/07/02 AMEND: 42713
12/27/01 ADOPT: 31000, 31001, 31003, 31004,
31005, 31006, 31007
12/26/01 AMEND: 80487
12/21/01 ADOPT: 31000, 31001, 31002, 31003,
31004, 31005, 31006, 31007
12/21/01 ADOPT: 1215, 1216, 1217, 1217.5, 1218,
1219, 1219.5
12/18/01 AMEND: 30950, 30951, 30951.1, 30952,
30953, 30954, 30955, 30956, 30957,
30958, 30959
12/14/01 AMEND: 41802 REPEAL: 41802.1,
41913
12/12/01 AMEND: 80225
12/05/01 ADOPT: 20430, 20432, 20434, 20436,
20438, 20440, 20442, 20444
12/03/01 AMEND: 55316.5, 55317, 28003.1,
58009
11/28/01 AMEND: 43810
11/27/01 AMEND: 42933
11/26/01 AMEND: 22000
11/19/01 AMEND: 80026, 80027
11/15/01 AMEND: 1032(i)
11/06/01 AMEND: 18302
11/05/01 REPEAL: 18140, 18141, 18142, 18143,
18144, 18145, 18146, 18147, 18148,
18149, 18150, 18151, 18152, 18153,
18154, 18155, 18156, 18157, 18158,
18159, 18160, 18161, 18162, 18163,
18164, 18165, 18166, 18167, 18168,
18169, 18170, 18171, 18172, 18173,
18174
10/26/01 ADOPT: 18400, 18405, 18406, 18407,
18408, 18409, 18409.5, 18410, 18411,
18412, 18413, 18414, 18415, 18416,
18417, 18418, 18419, 18420, 18421,
18422, 18423, 18424, 18425, 18426,
18427, 18428, 18429, 18430, 18431,
18432, 18433, 18434

Title 7

12/11/01 ADOPT: 236
11/27/01 ADOPT: 212.5

Title 8

02/22/02 ADOPT: 11010, 11020, 11030, 11040,
11050, 11060, 11070, 11080 REPEAL:
11010, 11020, 11020, 11040, 11050,
11060, 11070, 11080
02/14/02 AMEND: 17
02/08/02 AMEND: 3641, 3648
01/30/02 ADOPT: New Appendix D AMEND:
450, 453, 471, 475, 477, 494 REPEAL:
486, 487
01/17/02 AMEND: 5155

01/17/02 ADOPT: 206, 207 AMEND: 201, 205,
208, 212, 212.01, 212.2, 212.3, 212.4,
228, 229, 230, 231, 230.1, 230.2, 234.2
01/15/02 ADOPT: 17201, 17202, 17203, 17204,
17205, 17206, 17207, 17208, 17209,
17210, 17211, 17212, 17220, 17221,
17222, 17223, 17224, 17225, 17226,
17227, 17228, 17229, 17230, 17231,
17232, 17234, 17235, 17236, 17237,
17240, 17241, 17242, 17243, 17244,
17245, et seq.
01/15/02 ADOPT: 14300.1, 14300.2, 14300.03,
14300.04, 14300.05, 14300.06, 14300.07,
14300.08, 14300.09, 14300.10, 14300.11,
14300.12, 14300.13, 14300.14, 14300.15,
14300.16, 14300.17, 14300.18, 14300.19,
14300.20, 14300.21, 14300.22, 14300.23,
14300.24, 14300.25, et seq.
01/04/02 ADOPT: 11170 AMEND: 11160
01/03/02 AMEND: 3472, 4884, 4885, 4886, 4907,
4924, 4965, 4966, 4968
12/31/01 AMEND: 9792.1
12/26/01 AMEND: 1532.1
12/24/01 AMEND: 31100
12/04/01 ADOPT: 32015, 32016, 32325, 32603,
32604, 6000, 60010, 60020, 60030,
60035, 60040, 60050, 60070, 61000,
61005, 61010, 61020, 61030, 61040,
61050, 61055, 61060, 61065, 61070,
61072, 61075, 61080, 61090, 61100,
61105, 61110, 61115, 61120, 61125,
61130, et seq.
11/29/01 AMEND: 5031(c)(3)
11/19/01 AMEND: 341.15
11/08/01 AMEND: 3340(c) and (d)
11/02/01 AMEND: 15212
10/30/01 ADOPT: 344.5, 344.6, 344.7, 344.8,
344.9, 344.10, 344.11, 344.12, 344.13,
344.14, 344.15, 344.16, 344.17 AMEND:
Re-number 344.10 to 344.18
10/29/01 AMEND: 65
10/24/01 AMEND: 6249, 6251, 6260, 6262, 6270,
6272, 6281, 6282, 6283, 6290, 6295,
6328, 6329, Appendix A

Title 9

01/17/02 ADOPT: 9533 AMEND: 9500, 9505,
9510, 9515, 9517, 9520, 9525, 9530,
9532, 9535, 9540, 9545
12/12/01 ADOPT: 9500, 9505, 9510, 9515, 9517,
9520, 9525, 9530, 9532, 9533, 9535,
9540, 9545
12/10/01 AMEND: 7050, 7051, 7053, 7054, 7056,
7057

Title 10

02/27/02 AMEND: 2498.6
 02/26/02 ADOPT: 2581.1, 2581.2, 2581.3, 2581.4
 02/11/02 AMEND: 4019
 02/11/02 AMEND: 10.3154
 02/11/02 AMEND: 5002
 02/07/02 AMEND: 260.102.19, 260.140.41, 260.140.42, 260.140.45, 260.140.46
 01/31/02 ADOPT: 2192.1
 01/31/02 ADOPT: 2130, 2130.1, 2130.2, 2130.3, 2130.4, 2130.5, 2130.6, 2130.7, 2130.8
 01/10/02 AMEND: 2318.6, 2353.1
 01/09/02 AMEND: 2248.31, 2248.32, 2248.35, 2248.40, 2248.41, 2248.42, and 2248.47
 01/08/02 AMEND: 5460, 5461, 5462, 5463, 5464, 5465
 12/31/01 ADOPT: 1729, 1741.5, 1950.302
 AMEND: 1741.5
 12/31/01 ADOPT: 2695.30
 12/26/01 ADOPT: 2278, 2278.1, 2278.2, 2278.3, 2278.4, 2278.5
 12/26/01 AMEND: 2698.70, 2698.71
 10/31/01 AMEND: 4081, 4081.5

Title 11

02/25/02 ADOPT: 410, 411, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426
 02/19/02 AMEND: 20
 01/14/02 AMEND: 1005
 01/09/02 AMEND: 1081
 12/31/01 AMEND: 3000, 3001, 3003, 3007
 12/05/01 AMEND: 1005
 10/29/01 ADOPT: 410, 411, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426

Title 13

02/19/02 ADOPT: 156.00
 02/05/02 AMEND: 160.00, 170.00
 01/30/02 AMEND: 553.70
 01/18/02 AMEND: 599
 01/10/02 AMEND: 50.45 REPEAL: 50.40
 10/30/01 AMEND: 553
 10/24/01 AMEND: 1200, 1201, 1213.2

Title 14

02/22/02 AMEND: 2135
 02/04/02 AMEND: 17979
 01/16/02 AMEND: 17943(b)(26)
 01/10/02 ADOPT: 2.10, 5.60, 28.59 AMEND: 1.24, 2.06, 4.00, 4.15, 5.00, 5.05, 5.15, 5.20, 5.35, 5.40, 5.75, 7.00, 7.50, 8.00, 27.60, 27.65, 27.82, 28.27, 28.54, 28.55, 29.15, 40 REPEAL: 2.01, 2.02, 2.03, 2.04, 2.07, 2.10, 2.13, 2.14, 5.70, 41, 41.5, 42, 42.5
 01/09/02 ADOPT: 14021, 14022, 14023, 14024, 14025, 14026, 14027, 14028, 14029, 14030, 14031, 14032

12/31/01 ADOPT: 749.1
 12/20/01 AMEND: 2.00
 12/19/01 ADOPT: 180.4
 12/17/01 AMEND: 120
 12/13/01 AMEND: 670.5
 12/11/01 ADOPT: 17367, 17368, 17369, 17370.1, 17370.2, 18225
 11/29/01 ADOPT: 1057, 1057.1, 1057.2, 1057.3, 1057.4, 1057.5, 1058, 1058.1, 1058.2, 1058.3, 1058.4, 1058.5
 11/20/01 AMEND: 895.1, 898, 898.2, 914.8 [934.8, 954.8], 916 [936, 956], 916.2 [936.2, 956.2], 916.9 [936.9, 956.9], 916.11 [936.11, 956.11], 916.12 [936.12, 956.12], 923.3 [943.3, 963.3], 923.9 [943.9, 963.9]
 11/16/01 AMEND: 1038, 1104.1
 11/08/01 AMEND: 150.16
 11/07/01 AMEND: 1037.5
 11/01/01 ADOPT: 17211, 17211.1, 17211.2, 17211.3, 17211.4, 17211.5, 17211.6, 17211.7, 17211.8, 17211.9
 10/31/01 AMEND: 300(a)
 10/31/01 AMEND: 163, 163.5, 164
 10/30/01 ADOPT: 1059
 10/25/01 AMEND: 165, 165.5

Title 15

01/31/02 AMEND: 3041.3
 01/09/02 ADOPT: 4742, 4743, 4744, 4745, 4746, 4747 AMEND: 4730, 4732, 4733, 4734, 4735, 4736, 4737, 4739, 4740
 01/08/02 REPEAL: 3074
 11/29/01 ADOPT: 4746.5
 11/27/01 AMEND: 6045.2(e)(2)(G)
 11/20/01 ADOPT: 2646.1 AMEND: 2646

Title 16

02/26/02 AMEND: 3394.4, 3394.6
 02/20/02 AMEND: 1388, 1388.6, 1389, 1392, 1397.63 REPEAL: 1388.5
 02/19/02 AMEND: 1387.6, 1387.7, 1387.8
 02/13/02 AMEND: 3361.1
 02/11/02 ADOPT: 2085.4
 02/04/02 AMEND: 1399.157
 02/04/02 ADOPT: 2085, 2085.1, 2085.2, 2085.3, 2085.4, 2085.5, 2085.6, 2085.7, 2085.8, 2085.9, 2085.10, 2085.11, 2085.12, 2085.13 AMEND: 2070
 01/31/02 AMEND: 411
 01/31/02 ADOPT: 1399.698
 01/28/02 AMEND: 1531
 01/18/02 AMEND: 1391.7
 01/14/02 ADOPT: 980.1 AMEND: 974
 01/14/02 ADOPT: 1711
 12/19/01 AMEND: 1388, 1388.6, 1389, 1392, 1397.63 REPEAL: 1388.5
 12/18/01 AMEND: 1397.61, 1397.64, 1397.65

12/17/01 ADOPT: 2412 AMEND: 2418 REPEAL: 557.4, 557.5, 557.6, 557.8, 557.9, 557.12,
2411 (a)(1)(A) 557.13, 557.14, 557.16, 557.18, 557.19,
12/17/01 AMEND: 1088 557.20, 557.21, 557.22, 557.23, 560,
12/07/01 ADOPT: 386 560.1, 560.2, 560.3, et seq.

12/04/01 AMEND: 1887.3
11/28/01 ADOPT: 872, 872.1
11/27/01 AMEND: 3340.16.5
11/20/01 ADOPT: 2450
10/31/01 ADOPT: 890

Title 17

12/28/01 AMEND: 6508
11/19/01 ADOPT: 37000, 37020, 37025, 37100
11/19/01 AMEND: 57310, 57332, 57530
11/14/01 ADOPT: 33001, 33002, 33003, 33004,
3005, 33006, 33007, 33008, 33009,
33010, 33011, 33012, 33013, 330014,
33015, 33025 AMEND: 33020, 33030,
33040 REPEAL: 33001, 33010
11/07/01 AMEND: 60201
11/05/01 ADOPT: 2638 AMEND: 2500, 2502,
2505, 2551, 2552, 2553, 2596, 2614,
2626
10/29/01 ADOPT: 30400.5, 30400.60, 30403.5,
30403.8, 30406
10/29/01 ADOPT: 30437 AMEND: 30424, 30425,
30427, 30427.2, 30436, 30447
10/25/01 ADOPT: 54327.2 AMEND: 54302,
54327, 54327.1, 56002, 56093, 58651

Title 18

01/16/02 ADOPT: 4063.5, 4098 AMEND: 4018,
4021, 4022, 4023, 4026, 4027, 4034,
4047, 4055, 4056, 4057, 4058, 4059,
4060, 4062, 4063, 4064, 4065, 4080,
4081, 4091, 4092 REPEAL: 4028, 4067,
4079, 4082
01/10/02 ADOPT: 29
01/08/02 AMEND: 1620
01/07/02 AMEND: 122.5
12/24/01 AMEND: 17000.30
12/24/01 ADOPT: 17951-6 AMEND: 17951-4
12/17/01 AMEND: 1642
12/14/01 ADOPT: 138
12/06/01 AMEND: 1660
12/04/01 AMEND: 1661
11/20/01 AMEND: 19513
11/08/01 ADOPT: 206
11/01/01 AMEND: 1598
11/01/01 AMEND: 1617

Title 19

02/08/02 AMEND: 2900, 2910, 2915, 2940, 2945,
2955, 2970, 2980, 2990
12/28/01 AMEND: 981.3
12/27/01 ADOPT: 565.1, 567.1, 567.2, 567.3,
567.4, 567.5, 567.6, 567.7, 567.8, 573,
575 AMEND: 550, 550.2, 557.1, 557.3,

Title 20

01/16/02 AMEND: 201

Title 21

02/05/02 AMEND: 7101, 7102, 7111, 7114, 7116
12/04/01 AMEND: 7000

Title 22

02/21/02 ADOPT: 110041, 110098, 110284,
110299, 110428, 110430, 110473,
110539, 112002, 112015, 112025,
112034, 112035, 112100, 112110,
112130, 112140, 112150, 112152,
112154, 112155, 112200, 112210,
112300, 11230.1, 112302 AMEND:
110042, 110431, 110609
02/20/02 AMEND: 100209 (c)
02/13/02 ADOPT: 68300, 68301, 68302, 68303,
68304, 68305, 68306, 68307, 68308,
68309
02/11/02 ADOPT: 110413, 110550, 113100,
113200, 113300 REPEAL: 12-104.1, 12-
104.432, 12-221
02/08/02 AMEND: 66260.10, 66261.9, 66262.11,
66264.1, 66265.1, 66268.1, 66270.1,
66273.1, 66273.2, 66273.3, 66273.4,
66273.5, 66273.6, 66273.7, 66273.8,
66273.9, 66273.10, 66273.11, 66273.12,
66273.13, 66273.14, 66273.15, 66273.16,
66273.17, 66273.18, 66273.19, et seq.
01/30/02 ADOPT: 67450.40, 67450.41, 67450.42,
67450.43, 67450.44, 67450.45, 67450.46,
67450.47, 67450.48, 67450.49, 67450.50
AMEND: 66262.20, 66270.6
01/24/02 REPEAL: Repeal the language "(See
Section 3901.1, Retraining Benefits Defi-
nitions)" below Article 1.5. Retraining
Benefits.
01/17/02 ADOPT: 84400, 84401, 84422, 84461,
84465, 84468.1, 84468.2, 84468.4, 84478
REPEAL: 84001, 84022, 84061, 84063,
84065, 84300, 84322, 84322.1, 84322.2,
84361, 84365, 84365.5, 84368.3, 84369
01/08/02 ADOPT: 7630, 7632, 7632.1, 7632.3,
7632.5, 7634, 7634.1, 7634.3, 7634.5,
7636, 7636.1, 7636.3, 7636.5, 7637.7,
7636.9, 7638, 7638.1, 7638.3, 7638.5,
7638.7, 7638.9, 7638.11, 7638.13
12/31/01 AMEND: 66260.10, 66262.12, 66263.40,
66268.7 REPEAL: 66263.42
12/19/01 AMEND: 5151(c), 5151(e), 51518(b),
51521(i), 51527(b)

12/18/01 ADOPT: 11000, 110042, 110046,
110088, 110099, 110129, 110135,
110147, 110148, 110150, 110164,
110182, 110184, 110186, 110194,
110200, 110220, 110224, 110230,
110252, 110261, 110289, 110341,
110410, 110431, 110436, 110445,
110456, 110474, 110478, 110479, et seq.
11/30/01 ADOPT: 66273.6, 66273.80-66273.90
AMEND: 66261.9, 66273.1, 66273.8,
66273.9
11/13/01 ADOPT: 64860
11/08/01 ADOPT: 67900.1, 67900.2, 67900.3,
67900.4, 67900.5, 67900.6, 67900.7,
67900.8, 67900.9, 67900.10, 67900.11,
67900.12
11/08/01 ADOPT: 66250, 66250.1, 66250.2
11/06/01 AMEND: 4408, 4409, 4414
11/06/01 AMEND: 66264.140, 66264.143,
66264.145, 66264.147, 66265.140,
66265.143, 66265.145, 66265.147
11/02/01 ADOPT: 66261.9, 66273.1, 66273.2,
66273.3, 66273.4, 66273.5, 66273.6,
66273.7, 66273.8, 66273.9, 66273.10,
66273.11, 66273.12, 66273.13, 66273.14,
66273.15, 66273.16, 66273.17, 66273.18,
66273.19, 66273.20, 66273.30, 66273.31,
66273.32, 66273.33, et seq.
11/02/01 ADOPT: 100901, 100902, 100903,
100904, 100904.5 AMEND: 100900
10/24/01 AMEND: 12000

Title 22, MPP

02/21/02 AMEND: 87102, 87564.3, 87730
11/08/01 AMEND: 84110, 85002, 87102
10/25/01 ADOPT: 85081, 87593 AMEND: 85001,
87101

Title 23

02/13/02 AMEND: 3923
01/03/02 AMEND: 3904
12/28/01 AMEND: 451.1, 451.4, 451.5
11/27/01 AMEND: 3952

Title 25

01/08/02 ADOPT: 7300, 7301, 7302, 7303, 7304,
7305, 7306, 7307, 7308, 7309, 7310,
7311, 7312, 7313, 7314, 7315, 7316,
7317, 7318, 7319, 7320, 7321, 7322,
7323, 7324, 7325, 7326, 7327, 7328,
7329, 7330, 7331, 7332, 7333, 7334,
7335, 7336
01/03/02 ADOPT: 1302, 1316, 1317, 1318, 1319
AMEND: 1300, 1304, 1306, 1310
12/19/01 AMEND: 8202, 8203, 8212, 8212.1

Title 27

10/24/01 AMEND: 15240

Title 28

02/14/02 ADOPT: 1300.67.05
12/27/01 ADOPT: 1300.41.8
12/12/01 ADOPT: 1000

Title MPP

02/21/02 AMEND: 63-102, 63-300, 63-301, 63-
402, 63-405, 63-501, 63-502, 63-503,
63-504, 63-507
01/30/02 ADOPT: 69-209, 69-210 AMEND: 69-
201, 69-202, 69-203, 69-204, 69-205,
69-206, 69-207, 69-208, 69-211, 69-212,
69-213, 6-214, 69-215, 69-216, 69-217,
69-301 REPEAL: 69-210, 69-221
01/23/02 ADOPT: 33-135 AMEND: 33-120, 33-
510, 33-805
01/14/02 ADOPT: 63-016 AMEND: 63-102, 63-
300, 63-504, 63-801, 63-802, 63-804
12/11/01 AMEND: 44-314, 82-518
11/29/01 ADOPT: 44-302 AMEND: 25-301, 25-
302, 25-303, 25-304, 25-305, 25-306,
25-310.3, 25-330.9, 25-506, 44-304, 44-
305, 44-325, 44-327, 80-310

**OAL REGULATORY
DETERMINATIONS**

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
2001 OAL Determination No. 3
February 22, 2002**

Requested by:

MICHAEL J. VON HERRMANN

Concerning:

**DEPARTMENT OF THE CALIFORNIA HIGHWAY PATROL—
Rule determining the vehicle identification num-
ber of a vehicle bearing more than one number**

**Determination issued pursuant to Government
Code section 11340.5; California Code of Regula-
tions, title 1, section 121 et seq.**

ISSUE

Does the Department of the California Highway Patrol's rule designating the vehicle identification number of the frame as the vehicle identification number for a vehicle that is comprised of parts bearing more than one vehicle identification number constitute a "regulation" as defined in Government Code section

11342.600 which is required to be adopted pursuant to the rulemaking provisions of the Administrative Procedure Act?¹

CONCLUSION

The Department of the California Highway Patrol's rule designating the vehicle identification number of the frame as the vehicle identification number for a vehicle that is comprised of parts bearing more than one vehicle identification number is a "regulation" which is required to be adopted pursuant to the Administrative Procedure Act.

BACKGROUND

At the time of his determination request, Michael J. von Herrmann owned a half-ton pickup truck he sought to register in California. The truck had previously been damaged to such an extent that Mr. von Herrmann replaced its frame with one from a comparable 1990 truck. Substantially all of the other parts of the truck are from the 1994 model year, with the major components bearing vehicle identification numbers confirming their manufacture for the 1994 model year². In the course of attempting to register his truck, he encountered the challenged rule utilized by the Department of the California Highway Patrol ("Department") to determine the model year of a vehicle comprised of parts from more than one vehicle. The rule designates the vehicle identification number ("VIN") of the frame as the controlling number for purposes of identification of the vehicle. The frame of his truck bears a VIN indicating it was manufactured for the 1990 model year. Mr. von Herrmann argues that the challenged rule is a regulation that was not adopted in accordance with Administrative Procedure Act ("APA") procedures. He also complains that the rule effectively diminishes the value of his truck, making it four years older, and he points out the characteristics of his truck that are more in keeping with one from the 1994 model year.

Federal law requires vehicles and their major component parts to be marked with a VIN unique to each vehicle. (See generally 49 U.S.C. Chapter 331; 49 C.F.R., Parts 541, 565.) These laws are intended principally for the purposes of proper identification and theft and fraud prevention. 49 C.F.R., section 565.4, subdivisions (e) and (f) provide as follows:

"(e) The VIN of each vehicle shall appear clearly and indelibly upon either a part of the vehicle, other than the glazing, that is not designed to be removed except for repair or upon a separate plate or label that is permanently affixed to such part.

"(f) The VIN for passenger cars, multipurpose passenger vehicles and trucks of 4536 kg or less GVWR shall be located inside the passenger compartment. *It shall be readable, without moving any part of the vehicle, through the vehicle glazing under daylight lighting conditions by an observer having 20/20 vision (Snellen) whose eye-point is located outside the vehicle adjacent to the left windshield pillar.* Each character in the VIN subject to this paragraph shall have a minimum height of 4 mm. [Emphasis added.]"

When a damaged vehicle is repaired utilizing major parts³ from other vehicles, the repaired vehicle is likely to have more than one VIN associated with its various parts. If the Department were to rely upon the above-mentioned rule for placement of the VIN to select one VIN from among these numbers that would be recognized as the identifier of the vehicle, then the VIN would be the number atop the dashboard, adjacent to the left windshield pillar, and visible through the glazing. The difficulty with this simple solution is revealed by the Department in its "*Response to Request for Determination.*" Commissioner Helmick explains 11[v]ehicle thieves will often remove or alter visible vehicle identification numbers, such as the one on the VIN plate, in an attempt to alter the identity of the vehicle and conceal the fact the vehicle is stolen. Therefore, it is not appropriate to use this number solely to identify a vehicle when that number differs from the number stamped on the frame."

The Department's policy for reckoning with this dilemma is to recognize the frame number as the VIN. Explaining the rationale, Commissioner Helmick notes that "it is rare to find the identification number stamped on the frame altered or removed because of its inaccessibility." He also indicates that recognition of the frame's VIN as the primary number is "a well-established and accepted practice by automobile manufacturers, the insurance industry, law enforcement agencies, and the Department of Motor Vehicles" This practice, although common, is not one that is required by any law.

ANALYSIS

A determination of whether the Department's rule for resolving a discrepancy between the frame number and other identifying numbers associated with the

¹ The request for determination was filed by Michael J. von Herrmann, 7201 Pheasant Road, Fair Oaks, CA 95628. The Department of the California Highway Patrol's response was filed by D. O. Helmick, Commissioner, 2555 First Avenue, Sacramento, CA 95818. The request was given a file number of 00-009. This determination may be cited as "**2002 OAL Determination No. 3.**"

² A vehicle's VIN encodes its model year, in accordance with 49 C.F.R., section 565.6, subdivision (d), paragraph (1).

³ Major parts are listed in 49 U.S.C. section 33101 (6) and 49 C.F.R. section 541.5(a)(1) through (18).

other components of a vehicle is a “regulation” subject to the APA (ch. 3.5 (commencing with sec. 11340), pt. 1, div. 3, tit. 2, Gov. Code) depends on (1) whether the APA is generally applicable to the quasi-legislative enactments of the Department, (2) whether the challenged rule is a “regulation” within the meaning of Government Code section 11342.600, and (3) whether the challenged rule falls within any recognized exemption from APA requirements.

- (1) As a general matter, all state agencies in the executive branch of government and not expressly exempted by statute are required to comply with the rulemaking provisions of the APA when engaged in quasi-legislative activities. (*Winzler & Kelly v. Department of Industrial Relations* (1981) 121 Cal.App.3d 120, 126–128, 174 Cal.Rptr. 744, 746–747; Gov. Code, secs. 11342.520 and 11346.) Moreover, the term “state agency” includes, for purposes applicable to the APA, “every state office, officer, department, division, bureau, board, and commission.” (Gov. Code, sec. 11000.) The Department is in the executive branch of state government, and therefore, unless expressly exempted by statute, the APA rulemaking requirements generally apply to the Department.

In this connection, Vehicle Code section 2402 provides:

“The commissioner [of the Department of the California Highway Patrol] may make and enforce such rules and regulations as may be necessary to carry out the duties of the department. Rules and regulations shall be adopted, amended, or repealed in accordance with the Administrative Procedure Act, commencing with Section 11370 [now sec. 11340] of the Government Code.”

Thus, the APA rulemaking requirements generally apply to the Department. (See *Poschman v. Dumke* (1973) 31 Cal.App.3d 932, 942, 107 Cal.Rptr. 596, 603 (an agency created by the Legislature is subject to and must comply with APA).)

- (2) Government Code section 11340.5, subdivision (a), prohibits state agencies from issuing rules without complying with the APA. It states as follows:

“(a) No state agency shall issue, utilize, enforce, or attempt to enforce *any* guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a [‘regulation’] as defined in Section 11342.600, *unless* the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA]. [Emphasis added.]”

Government Code section 11342.600, defines “regulation” as follows:

“. . . every rule, regulation, order, *or* standard of general application *or* the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by *any* state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. [Emphasis added.]”

According to *Engelmann v. State Board of Education* (1991) 2 Cal.App.4th 47, 62, 3 Cal.Rptr.2d 264, 274–275, agencies need not adopt as regulations those rules that reiterate a statutory scheme which the Legislature has already established. But “to the extent any of the [agency rules] depart from, or embellish upon, express statutory authorization and language, the [agency] will need to promulgate regulations”

Under Government Code section 11342.600, a rule is a “regulation” for these purposes if (1) the challenged rule is *either* a rule or standard of general application *or* a modification or supplement to such a rule and (2) the challenged rule has been adopted by the agency to *either* implement, interpret, or make specific the law enforced or administered by the agency, *or* govern the agency’s procedure. (See *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 440, 268 Cal.Rptr. 244, 251; ⁴ *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497, 272 Cal.Rptr. 886, 890.)

For an agency rule to be a “standard of general application,” it need not apply to all citizens of the state. It is sufficient if the rule applies to all members of a class, kind, or order. (*Roth v. Department of Veteran Affairs* (1980) 110 Cal.App.3d 622, 630, 167 Cal.Rptr. 552, 556; see *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 323–324 (a standard of general application applies to all members of any open class).) The challenged rule concerning vehicle identification applies to all members of the open class of persons who own a vehicle comprised of parts obtained from more than one vehicle. Membership in the affected class changes as vehicles are bought, sold and reconstructed from used parts. Consequently, the challenged rule on vehicle identification numbers is a standard of general application.

Vehicle Code sections 2805 and 5505 authorize the Department and some of its employees to determine the proper identity of vehicles. Section 2805, subdivision (a), provides:

⁴ OAL notes that a 1996 California Supreme Court case stated that it “disapproved” of *Grier* in part. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 577, 59 Cal.Rptr.2d 186, 198. *Grier*, however, is still good law for these purposes.

“For the purpose of locating stolen vehicles, (1) any member of the California Highway Patrol, or (2) a member of a city police department, a member of a county sheriff’s office, or a district attorney investigator, whose primary responsibility is to conduct vehicle theft investigations, may inspect any vehicle of a type required to be registered under this code, or any identifiable vehicle component thereof, on a highway or in any public garage, repair shop, terminal, parking lot, new or used car lot, automobile dismantler’s lot, vehicle shredding facility, vehicle leasing or rental lot, vehicle equipment rental yard, vehicle salvage pool, or other similar establishment, or any agricultural or construction work location where work is being actively performed, and may inspect the title or registration of vehicles, in order to establish the rightful ownership or possession of the vehicle or identifiable vehicle component.

“As used in this subdivision, ‘identifiable vehicle component’ means any component which can be distinguished from other similar components by a serial number or other unique distinguishing number, sign, or symbol.”

With respect to vehicles that have been reported as dismantled or total loss salvage, Vehicle Code section 5505 provides, in part:

- “(a) This section applies to any vehicle reported to be a total loss salvage vehicle pursuant to [Vehicle Code] Section 11515 and to any vehicle reported to have been dismantled pursuant to [Vehicle Code] Section 5500 or 11520.
- “(b) Whenever an application is made to the Department of Motor Vehicles to register a vehicle described in subdivision (a), that department shall inspect the vehicle to determine its proper identity or request that the inspection be performed by the Department of the California Highway Patrol.
- “(c) The Department of the California Highway Patrol shall inspect, on a random basis, those vehicles described in subdivision (a) that have been presented to the Department of Motor Vehicles for registration after completion of the reconstruction process to determine the proper identity of those vehicles. The inspection

conducted pursuant to this subdivision shall be a comprehensive, vehicle identification number inspection.”

The challenged rule is utilized by the Department in its implementation of these duties, clarifying the procedure to be followed when the officer is presented with a vehicle that is comprised of parts displaying more than one VIN. Thus, this rule which implements Vehicle Code sections 2805 and 5505, and governs the Department’s procedure is a “regulation” as defined in Government Code section 11342.600.

(3) With respect to whether the Department’s rule on VINs falls within any recognized exemption from APA requirements, generally, all “regulations” issued by state agencies are required to be adopted pursuant to the APA, unless *expressly* exempted by statute. (Gov. Code, sec. 11346; *United Systems of Arkansas, Inc. v. Stamison* (1998) 63 Cal.App.4th 1001, 1010, 74 Cal.Rptr.2d 407, 411 (“*When the Legislature has intended to exempt regulations from the APA, it has done so by clear, unequivocal language.*”)(Emphasis added.)

The Department does not contend that any *express* statutory exemption applies. Our independent research having also disclosed that no express statutory exemption applies, we conclude that none applies.

In summary, we conclude that the Department’s rule designating the frame number as the VIN of a vehicle comprised of parts bearing more than one VIN is a “regulation” as defined in Government Code section 11342.600 which is required to be adopted pursuant to the rulemaking provisions of the APA.

DATE: February 22, 2002

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